

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 114.

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GEORGE B. STARKWEATHER, APPELLANT,

vs.

HERBERT W. T. JENNER, JOHN D. CROISSANT, JOHN O.  
JOHNSON, ANDREW B. DUVALL, AND CHARLES C.  
COLE.

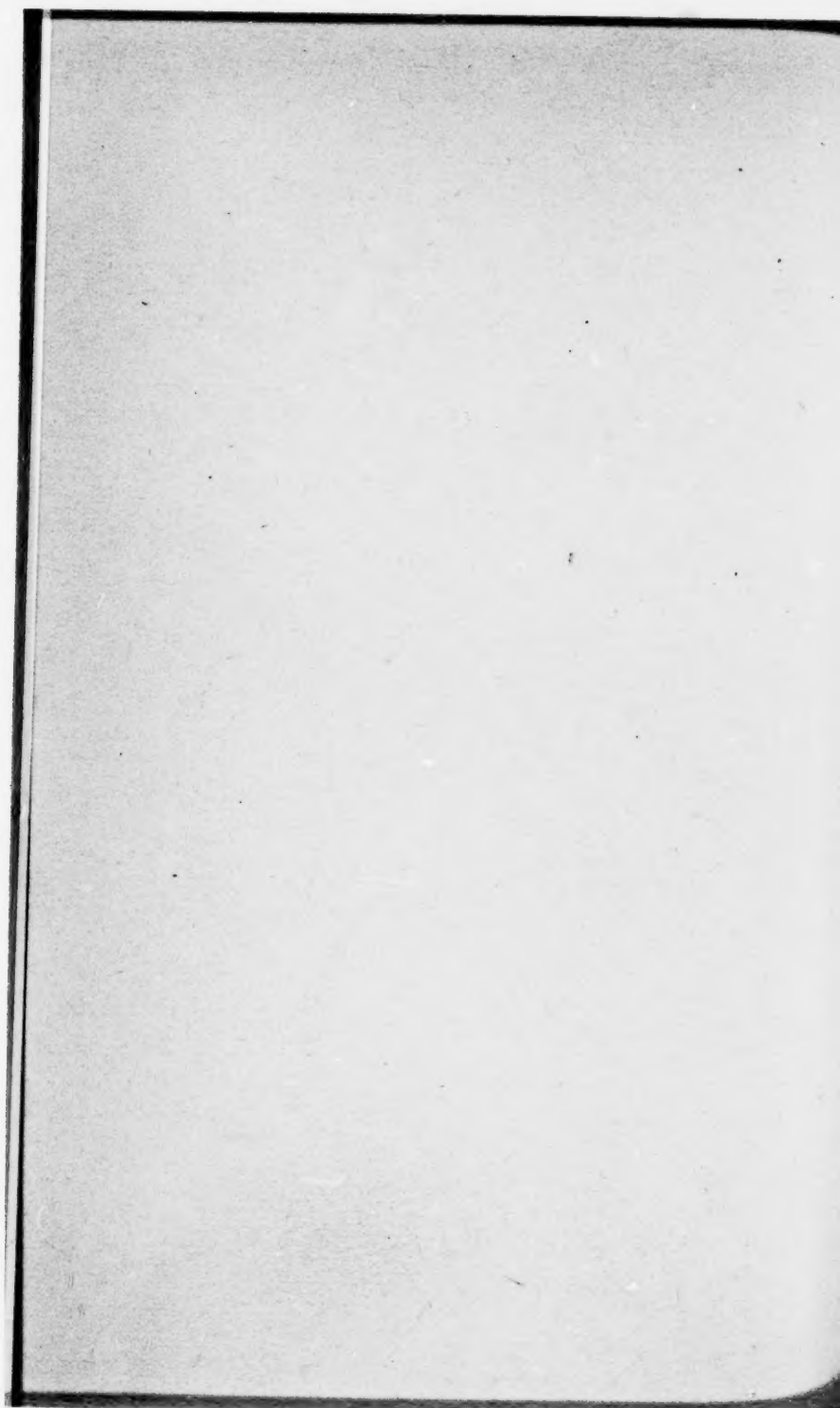
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APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF  
COLUMBIA.

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FILED APRIL 4, 1908.

(21,092.)





(21,032.)

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## In the Court of Appeals of the District of Columbia.

GEORGE B. STARKWEATHER, Appellant, }  
vs. } No. 1538.  
HERBERT W. T. JENNER ET AL. }

a Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER, Complainant, }  
vs. }  
HERBERT W. T. JENNER, JOHN D. CROIS- } No. 20205. In Equity.  
sant, John O. Johnson, Robert G. Camp- }  
bell, Brainard H. Warner, S. Herbert }  
Giesy, Defendants. }

UNITED STATES OF AMERICA, } ss :  
District of Columbia, }

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Order to Clerk for Preparation of Transcript.*

Filed February 20, 1905.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER }  
vs. } In Equity. No. 20205.  
H. W. T. JENNER ET AL. }

The clerk of the supreme court of the District of Columbia will prepare the transcript of record in this cause on appeal by complainant to the Court of Appeals of the District of Columbia; such transcript to consist of the following papers, records and proceedings:

1. Amended bill filed April 1, 1903.
2. Answer of H. W. T. Jenner to amended bill of complaint filed May 11, 1903.
3. Joint answer of Andrew B. Duvall and C. C. Cole, trustees, to amended bill of complaint, filed July 27, 1903.

4. Joint and several answers of John D. Croissant and John O. Johnson, to amended bill of complaint, filed October 30, 1903.

5. Replication.

6. Complainant's testimony included within pp. 1 to 227, filed June 29, 1904, and Exhibits Nos. 1 to 20, inclusive filed by complainant.

7. Defendants' testimony and exhibits filed May 23rd, 1904.

2 8. Decree dismissing bill and appeal.

9. Memorandum showing, giving of bond, extension of time for filing transcript &c.

10. Original bill, exhibits, deed of trust and syndicate certificate, testimony of Ellis Spear within pp. 35 to 46 inclusive; testimony of S. Herbert Giesy within pp. 60 to 63 inclusive, and decree in equity cause 20,360.

11. Amended bill and exhibit in equity cause No. 19,192.

12. Testimony of H. W. T. Jenner in equity cause 16,612, included within pp. 8 to 10 inclusive, where said Jenner testifies as witness for complainant.

R. P. EVANS,  
EDWIN FORREST,  
*Attorneys for Complainant.*

Mr. B. F. Leighton, attorney for defendant :

Take notice that we have filed the above order with the clerk of the supreme court of the District of Columbia, for preparation of record.

R. P. EVANS,  
EDWIN FORREST,  
*Attorneys for Complainant.*

February 18, 1905.

3

*Amended Bill.*

Filed April 1, 1903.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER, Complainant, }

vs. }

HERBERT W. T. JENNER, JOHN D. CROISSANT, JOHN O. JOHNSON, ANDREW B. DUVALL, and CHARLES C. COLE, Defendants. } In Equity. No. 20,205.

And now comes the complainant by leave of the court first had and obtained and files this, his amended bill of complaint and alleges as follows :

First. That he is a citizen of the United States, of lawful age, resident of the District of Columbia and files this amended bill of com-

plaint in his own right with respect to the matters and things hereinafter set forth and contained.

Second. That the defendants, Herbert W. T. Jenner, John D. Croissant, John O. Johnson, Andrew B. Duvall, and Charles C. Cole, are all of lawful age, citizens of the United States, residents of the District of Columbia; that the defendant Jenner, is sued in his own right and as holding certain property hereinafter described as trustee, with respect to the matters and things hereinafter set forth and contained; the defendants Croissant and Johnson are sued as trustees under a certain deed hereinafter referred to and set forth; and the defendants Andrew B. Duvall and Charles C. Cole, are sued as

trustees under a certain deed of trust hereinafter referred to.

4 Third. That heretofore, to wit: on the 2nd day of May, 1892, and for some time prior thereto, the complainant was the owner of a certain tract of land in the county of Washington, District of Columbia, consisting of, to wit: ten acres, and in compliance with certain agreements, contracts, and understandings had with certain persons for the purchase of said property, the complainant made, executed and delivered certain contracts, agreements and conveyances with and to the defendants Croissant and Johnson, as trustees, for a certain syndicate of persons known as and called the Cres-ent Heights syndicate, and the said trustees acting under and by virtue of the power and authority conferred upon them by the persons interested in the said purchase, made and executed, to wit: thirty shares or certificates each of the face value of \$2500 representing the amount of \$75000 which was agreed to be paid to the complainant for the purchase of said property in accordance with certain contracts, agreements and understandings had with the persons desiring to purchase the complainant's title and interest therein and of the said certificates or shares, to wit: eleven thereof were transferred by the said defendants Croissant and Johnson, as trustees, to the complainant in part payment of the purchase price of said property in part compliance with the said contracts, agreements and understandings aforesaid and of which said certificates or shares the complainant is now the owner of, to wit: four of such shares or certificates, and among the persons interested in the purchase of said property and to acquire certain shares or certificates representing

5 such interest was the defendant Jenner, who acquired, held and who, as this complainant is reliably informed and believes and so avers, now holds, owns or controls at least, to wit: four shares or certificates representing interest in said property aforesaid known as the Cres-ent Heights property: that at the time of the making, executing and delivery of the said contracts, agreements and conveyances aforesaid there were outstanding against and upon the said property certain deeds of trust which had been made and executed by the complainant.

And complainant further says that of the thirty certificates or shares made and executed by the defendants Croissant and Johnson, as trustees, six thereof remained in the possession of the said trus-

tees, who now and ever since have held them without making any disposition thereof so far as this complainant is informed and verily believes.

Third. That on, to wit: January 29th, 1889, and prior to the making of the contracts, agreements, understandings and conveyances hereinbefore stated and set forth, the complainant made, executed and delivered a certain deed of trust to the defendants Andrew B. Duvall and Charles C. Cole on what is known and described as the seven acre portion of the ten acre tract hereinbefore referred to, to secure a loan of \$7,553.34, payable in four years after date, and to meet and pay off the same at the maturity thereof the certain six shares or certificates hereinbefore referred to were held by the said trustees to be sold or disposed of and the value of the six shares or certificates so held by the defendants Croissant and Johnson, trustees, was more than sufficient to have paid off and liquidated the said trust at maturity; but the said defendants Croissant and Johnson, although fully authorized, empowered and required so to do by the contracts, agreements and undertakings as aforesaid, and by the obligations imposed upon them as such trustees, did not use or dispose of the said six shares or certificates for such purpose nor raise the money necessary by assessment as required by the terms of the trust under which the said defendants Johnson and Croissant held said property, although said last named defendants knew that the owners or holders of shares or certificates in said syndicate liable to assessment were financially able to pay and meet any such assessments, but in violation of their duties and obligations in the premises and as required by the said contracts, agreements and undertakings the said trustees unlawfully, illegally and fraudulently and in violation of their duties as trustees, and in combination, confederacy and unlawful and fraudulent collusion with the defendant Jenner for the purpose of securing him, said Jenner, an unlawful and fraudulent advantage in the purchase and acquisition of said property, permitted, allowed, urged, invited and insisted that said property, to wit: the seven acre tract so mortgaged as aforesaid should be advertised and sold, and the same was accordingly advertised and sold, to wit: on February 3rd, 1898, to the defendant Jenner at and for the alleged sum of \$17,100 and a conveyance thereof was duly made to said Jenner by the defendants Andrew B. Duvall and Charles C. Cole, trustees named in said deed of trust and recorded in Liber 2294 at folio 167 *et seq.* of the land records in and for the District of Columbia and a true and certified copy thereof is hereto annexed as part hereof, and marked Exhibit "A."

Fourth. He further says that after the making, execution, and delivery of said trust to secure said sum of \$7,553.34 and down to, to wit: May 2nd, 1892, the interest thereon was duly paid by this complainant and thereafter it was the duty of the defendants Croissant and Johnson, as trustees, to pay said interest and this complainant says that under the power and authority conferred on the said defendants Croissant and Johnson they were, as such

trustees, authorized and empowered to duly assess the share-holders or certificate-holders in accordance with the terms of the trust to the said Croissant and Johnson for the share or *pro rata* amount due by each of said certificate or share-holders to meet such interest and the expenses of holding said property and the said defendants Croissant and Johnson refused, failed and neglected to make such assessments, and in lieu of the same certain persons, including the defendant Jenner, raised the amount necessary to pay the interest due on said trust aforesaid, down to, to wit: the year 1898 when the parties in interest including the defendant Jenner refusing to raise any further sum towards the payment of the interest and the same being in default, the property was advertised and sold as aforesaid.

Fifth. The complainant says, as he has been reliably informed and believes, and on such information and belief avers and charges the facts to truthfully be that prior to the said sale under the said deed of trust dated January 29, 1889, several persons interested in the said syndicate and in the said seven acre tract of land, including the late Robert G. Campbell, were anxious to bid on said prop-

erty and purchase the same, and would have bid thereon at  
8 least twenty-five thousand dollars for said property, but at the special instance and request of the defendant Jenner and

in fraud of the rights of this complainant and other share or certificate owners and under and in compliance with an agreement and understanding with him, said Jenner, the said persons, including the said Robert G. Campbell, refrained and refused to bid upon said property, it having been stated to them by the defendant Jenner, that the said property would be bid in by him, the said defendant Jenner, and secured for a much less sum if they did not bid, under such contract and understanding, and held by him, the defendant Jenner, under such contract and understanding in trust for the owners of interests in the said property as represented by the certificates or shares held by said interested parties respectively, but, after the purchase by the said defendant Jenner at said sale, he, the said defendant Jenner refused to keep or carry out his said agreement and refused to recognize or consider that any of the parties interested in said syndicate as share or certificate holders thereof had any interest in the purchase so made by the said defendant Jenner and failed and refused to recognize any interest that they had in such purchase but on the contrary said and claimed that he was the sole owner in his own right and not as trustee for the persons aforesaid, interested in said syndicate as share or certificate holders or that they had any interest whatever in said purchase so made by the said defendant Jenner, and has ever since said time and still refuses to keep and carry out said agreement or recognize the interests of any of the said  
certificate or share holders of said syndicate property.

9 The complainant says that the action and conduct of the defendant Jenner as in this paragraph stated, was in fraud of the rights of this complainant as a share or certificate holder and a person interested in said property and was in fraud of the rights and



interests of other certificate or share holders in said property and the action and conduct of the said defendant Jenner in the premises has caused loss and injury to this complainant and other certificate or share holders in said property, and therefore the court should declare that the said defendant Jenner holds the said property as trustee for and on behalf of the share or certificate holders in said property and not in his own, Jenner's individual right.

Sixth. He further says that in dealing with the defendants Croissant and Johnson as trustees, the defendant Jenner, in fraud of the rights of this complainant and other share or certificate holders wrongfully and fraudulently induced the defendants Croissant and Johnson to deed and convey to him, the said Jenner, a certain portion of the said ten acre tract for a consideration wholly nominal and which the said defendant Jenner afterward was compelled to reconvey to the defendants Croissant and Johnson and this complainant refers to such transaction for the purpose of showing, among other things, the actions and conduct of the said defendants in dealing with the said property and acting in combination, concert and confederacy together for the purpose of acquiring control and ownership of said property or the greater part thereof in derogation of the rights of this complainant and other certificate or share

10 holders; and this complainant in further evidence of this charge says that for the purpose of securing a fraudulent and undue advantage of the other certificate or shareholders, who, in common with the defendant Jenner, were interested in said property, the defendant Jenner in fraud of their rights purchased at tax sale the said seven acre tract of land and secured from the District of Columbia tax deeds for the same in his own individual right and name for the purpose, as this complainant verily believes, to use the same for his own individual interest and advancement and to the injury of the rights of the complainant and other certificate or shareholders interested in said property.

Seventh. That the complainant is advised and therefore charges he is entitled, either to have the conveyance hereinbefore referred to of the said seven acre tract to the defendant Jenner set aside and cancelled, or else, to have the court decree that the defendant Jenner holds the said property so purchased and conveyed to him under the circumstances aforesaid in trust for the share or certificate holders of the said syndicate.

Eighth. The complainant further says that he is entitled to an accounting from the said defendant Jenner of the rents and profits, if any, derived from the said tract of land so purchased by and conveyed to him as aforesaid, since the date of the said conveyance and what payments, if any, the said Jenner has made, on account of the same, and what interest, if any, paid on account of any trust that may be upon said tract and what amount, if any, is due by this complainant and other certificate or share holders for and on account of their interest therein, to the said defendant Jenner, as trustee

11 for or on account of any payments made by him on account of said property.

The premises considered the complainant prays:

1. That process may issue directed to the defendants, commanding them and each of them to appear and answer this amended bill of complaint.

2. That the defendant Jenner may be enjoined and restrained from making or attempting to make any transfer or conveyance of the said seven acre tract of land referred to in these proceedings or of his interest therein pending a final settlement of this suit.

3. That the deed of conveyance from the defendants Andrew B. Duvall and Charles C. Cole, trustees, under said deed of trust of January 29, 1889, to the defendant Jenner may be set aside and cancelled for the reasons in this amended bill of complaint appearing, or in the alternative that the court decree that the said defendant Jenner holds the title to said property in trust for the share or certificate holders in the said syndicate representing interests in said property in proportion to the respective shares or interests therein of the members of said syndicate.

4. That an accounting may be had between the defendant *Janifer*, and the complainant and other certificate or share holders in said syndicate in relation to the matters set forth in the 8th paragraph hereof, and for such purpose this case may be appropriately referred to the auditor of this court.

5. That the complainant may have such other and further relief in the premises as to the court may seem meet and just and the equities of the case require.

12 The defendants to this amended bill of complaint are:

Herbert W. T. Jenner, John D. Croissant and John O. Johnson, and Andrew B. Duvall and Charles C. Cole.

GEO. B. STARKWEATHER.

R. P. EVANS,

EDWIN FORREST,

*Sol'rs for Compl't.*

George B. Starkweather being first duly sworn according to law deposes and says: that he has read over the above amended bill of complaint by him subscribed and knows the contents thereof; that the facts therein stated of his own knowledge are true; and the facts therein stated on information and belief, he believes to be true.

GEO. B. STARKWEATHER.

Subscribed and sworn to before me this 31st day of March, 1903.

[SEAL.]

M. A. SCHEELE,

*Notary Public, D. C.*

Filed May 11, 1903.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER	} No. 20205. In Equity.
vs. HERBERT W. T. JENNER ET AL.	

The defendant, Herbert W. T. Jenner, for answer to so much and such parts of complainant's amended bill of complaint, as *he* is advised is necessary and material for him to make answer to, answering says:—

1 and 2. Answering the first and second paragraphs of complainant's bill of complaint, this defendant says that the averments therein contained, are admitted so far as this defendant is concerned.

3. Answering the third paragraph of said amended bill of complaint, this defendant says that he admits that the complainant had record title to ten acres of land, more or less, situate in the county of Washington, in said District, as stated in said paragraph of said bill; and that the defendants Croissant and Johnson, as trustees, contracted to purchase said real estate of the complainant, for the sum of \$75,000, for a certain syndicate as therein stated; that they divided the said purchase price of said property into thirty equal parts or shares, and issued certificates therefor, of the face value of \$2500 each. This defendant has no personal knowledge as to the number of shares transferred by the said

Croissant and Johnson unto the said complainant, nor has  
 14 he sufficient information upon which to base a reasonable belief as to the same, and will leave complainant to make such proof of this averment as he may deem material. Defendant has no personal knowledge as to the number of shares that are still owned by complainant, or whether he is the owner of any shares or interest in said syndicate; but, upon information and belief he states, that if he is still the owner of any shares in said syndicate, they have been and are now pledged by the complainant for the payment of debts due and owing by him, which are greatly in excess of the value of said certificates; and of his interest in said syndicate; and that complainant has no substantial interest in said syndicate, but a naked legal interest only, which alone gives him standing in court. This defendant admits that he was the owner of four shares or certificates of the Crescent Heights syndicate. He admits that at the time of the execution and delivery of the deed conveying the title of the property to the said trustees, Croissant and Johnson, it was encumbered by certain deeds of trust, which had been made and executed by the complainant. He admits that of the

thirty shares or certificates made and executed by the defendants, Croissant and Johnson, as trustees, six remained in the possession of the said trustees, and were never sold or disposed of by them, as stated in said paragraph of said bill. This defendant avers that the said Croissant and Johnson were unable to sell said shares, after the most diligent effort made on their part so to do. This defendant denies that the said Croissant and Johnson were his agents, in any

sense, in negotiating the purchase of said property, with the  
15 said complainant; and that such contracts and agreements or understandings as existed between the said Croissant and Johnson and the said complainant, were merged in and extinguished by the conveyance of the property subsequently made by the said complainant unto the said Croissant and Johnson, as trustees, as aforesaid. That in so far as said contracts, agreements or understandings were not in writing, this defendant sets up and will rely upon the statute of frauds as a defense to this action, which he cannot more specifically plead because of the indefinite character of the allegations of complainant's said amended bill. Defendant says further that at the time of the formation of the syndicate, he held the promissory note of the complainant for the sum of \$2500, secured by deed of trust on seven of the ten acres in controversy; that by the false and fraudulent representations of said complainant as to the value of the ground, and the condition of its title, he surrendered said note at the time of the organization of said syndicate, and took in exchange therefor, one share in said syndicate; that he also purchased from the trustees one other share, for a little over \$2500; that subsequently he purchased two other shares in the syndicate from complainant, and that he now holds and owns eight shares therein. Defendant further states that the trustees, Croissant and Johnson paid unto the said Starkweather, \$10,000, and other money, in cash, at the time said property was conveyed to them by him, besides the syndicate shares which were delivered to him by said trustees. Defendant admits the execution and delivery of the deed of

16 trust of Jan. 29, 1889, to the defendants Duvall and Cole, on the seven acre portion of the ten acre tract, substantially as stated in said paragraph of said bill. Defendant avers that it was as much the duty and legal obligation of the said complainant to purchase said certificates, as it was that of the defendant or any member of the syndicate to buy the same. Many of the holders of said certificates were unwilling to be assessed, and some were not able to pay the assessments, if such had been made; and this defendant denies that the said trustees "unlawfully illegally and fraudulently, and in violation of their duty as such trustees, in combination and confederacy, and unlawful and fraudulent collusion with this defendant for the purpose of securing him, the said Jenner, an unlawful and fraudulent advantage in the purchase and acquisition of said property, permitted that the said seven acre tract be advertised and sold;" said statement is wholly false, and is specifically and emphatically denied, and defendant will require of complain-

ant, strict proof of all and singular of said allegations. Defendant admits that the property was advertised and sold under the deed of trust made by the said complainant, to the defendant, substantially as averred in this paragraph of said bill. Defendant avers that prior to said sale to him, to wit, in the year 1897, said property was advertised for sale at public auction, by the defendants Duvall and Cole, as trustees under said deed of trust; that the sale took place in accordance with said advertisement, and the powers conferred upon said trustees by the deed of trust, and was bid in by one,

- 17 Ricker, who was the highest and best bidder therefor, as agent for the complainant; that he thereafter assigned his rights under said sale, before a deed passed, to the said Starkweather; that said Starkweather was unable or unwilling to comply with the terms of his purchase, and defaulted, or failed to complete his purchase; and the property was subsequently re-advertised by said trustees, and sold by them, in pursuance of said advertisement, on the 3d. day of February, 1898, to this defendant, for the sum of \$17,100; that said last named sale was fairly conducted in all respects, and that this defendant was the highest and best bidder therefor, and was entitled in law and equity, to the conveyance of said property, which was subsequently made to him by said trustees, in pursuance of the same, by said trustees, Duvall and Cole. This defendant says that he purchased said property for himself and certain other members of the syndicate, who were willing to join with him, and contribute their proportional part of the purchase money of said property. Defendant states further that the complainant heretofore, to wit, on the sixth day of May, 1896, exhibited his bill against the defendants Croissant and Johnson and others, and this defendant, praying among other things, to set aside and annul the said deed made by the said Starkweather to the said Croissant and Johnson, conveying the title of the property in litigation unto the said Croissant and Johnson, as trustees, as aforesaid, which case is known as equity No. 16,612, now pending in this court. That by the reason of the pending of this case, and the attack made upon the title of the defendants Croissant and Johnson to the real estate, conveyed to them by the said Starkweather and by reason of the misstatements made by complainant, as to the condition of the title, the shares in said syndicate became and were unmarketable; such persons as had purchased shares in said syndicate were unwilling to advance more money thereon, in the then condition of the title, and the said trustees, pending such litigation, were unable to give title to said property, or to deal with the same in any manner, and nothing was or could be done in the premises, other than what was done. Defendant says that he purchased said property at public auction, on February 3d. 1898, as aforesaid, for the purpose of protecting his own interests, and to save, if possible, the money he had already advanced upon said property; that at that time he asked certain of the shareholders to join him in making the said purchase; that some of those so asked, joined with him, and others did

not; that after he had made the said purchase, certain of the shareholders came forward, and asked to have an interest in same; and to those who were willing to pay for the same, he sold interests at the same proportionate price as paid by him; that he did not refuse an interest to any shareholder who was willing to pay for same.

Fourth. Answering the fourth paragraph of complainant's bill, this defendant admits that the said trustees, Croissant and Johnson were authorized and empowered to assess the share holders or certificate holders for the share or pro rata amount due by said certificate or shareholders to meet the interest and the expenses of holding said property, and that they failed to exercise this power.

19 He admits further that the interest was paid by the said trustees from moneys obtained from himself and others interested in said syndicate, who desired to prevent a sale under said trust, till after the filing of the suit in equity 16,612, as aforesaid, and until the year 1897. This defendant says that it was as much the equitable and legal duty of the said Starkweather to pay his pro rata share of such sums as were due and owing by said trustees to meet said interest, and the taxes as they accrued due on said property, and other expenses incidental to the administration of said trust, as it was of this defendant or of any other shareholder in said syndicate; that complainant never contributed toward the payment of his part of the interest, after he deeded the said property to Croissant and Johnson, or to the liquidation of the taxes as they accrued, or for any other purpose connected with the administration of the trust; and upon information and belief, this defendant says that no assessment that the trustees might have made, would have been paid by the said complainant; that he had hypothecated all his shares in said syndicate, and was in no financial condition to meet his assessments had they been made. That the other members of the syndicate were unwilling to advance any more money on the interest held by them, because of the uncertainty of the value of the property, and of the condition of the title thereto and that the trustees, by general consent, tacitly, if not actually given, omitted to assess the shareholders as they were authorized to do.

Fifth. Answering the fifth paragraph of complainant's bill of complaint, this defendant says that each and all of the averments therein contained are untrue, and are denied, and this  
20 defendant will demand strict proof of them and each of them.

Sixth. Answering the sixth paragraph of complainant's said amended bill, this defendant says that the syndicate property bounded upon a certain street or public highway, known as Spring street; that the portion of said property so fronting, was, prior to the formation of said syndicate, divided by one J. C. Lewis, the then owner thereof, into 24 lots; complainant had sold all the desirable portion of these lots to colored people, who had built shanties thereon, to the great injury of the whole property; that there remained a few lots and parts and fragments of lots of little value. That at that time, the Commissioners of the District of Columbia had projected

an extension or widening of Spring Street road, which embraced within its limits a portion of such lots and fragments of lots, the title to which was in the said Croissant and Johnson. Had the Commissioners widened said street as intended, they would have been obliged to condemn such lots and parts of lots as were within the limits of said proposed street. The trustees conveyed the same unto this defendant, with the understanding and agreement that he should loan certain money to them for the use of the syndicate, and that when said land was condemned, he should collect the damages allowed for such of the same as was taken, reimburse himself for such money as had been loaned by him to the syndicate, pay all the expenses connected therewith, and pay one-half the residue to said trustees. On the faith of this agreement, he advanced, from time to time,

21        sums of money to said trustees for syndicate purposes. That subsequently said Commissioners changed their plans with regard to the proposed widening of Spring street, and this defendant then voluntarily conveyed said lots and parts of lots to the said trustees, Croissant and Johnson, taking their note for the moneys which he had advanced to them, as aforesaid.

That said conveyance was made to him upon the trust aforesaid, and for no other purpose, and with no other intention; and this the complainant well understood, and expressed himself after said conveyance by the said trustees Croissant and Johnson, to this defendant, as aforesaid, as being entirely satisfied with the transaction. This defendant says further that it is true that he purchased the property at different times, at said tax sales, but says that he did so in order to protect his own interests in said property, and to prevent a person having no interest therein, from acquiring a tax title thereto; that such purchases were not made to cut out or defeat the interest of any stockholders in the syndicate, but to protect his own interest, primarily, while the other stockholders would be incidentally benefitted thereby. In so far as the statements made in said paragraph of said bill do not accord with the statements made in this paragraph of defendant's answer, they are each and all specifically denied, and he will require strict proof of each and all of them.

Seventh. Answering the seventh paragraph of complainant's said bill of complaint, this defendant denies that the complainant is entitled to the relief set out therein. He says that the statements therein contained are conclusions of law, rather than aver-

22        ments of fact requiring an answer.

Eighth. Answering the eighth paragraph of complainant's bill of complaint, this defendant denies that complainant is entitled to the relief therein set out. He says that said paragraph contains no averment of fact that he is called upon to answer, but rather is an inference of law to be drawn from the allegations of fact contained in the other paragraphs of said bill; and he leaves the complainant to make such proof thereof as he may deem material.

Having fully answered said amended bill of complaint, this de-

defendant prays to be hence dismissed, with his reasonable costs in this behalf incurred.

HERBERT W. T. JENNER.

B. F. LEIGHTON,  
*Solicitor for H. W. T. Jenner.*

DISTRICT OF COLUMBIA, *To wit:*

I, Herbert W. T. Jenner, being first duly sworn, on oath say that I have read the foregoing answer by me subscribed, and know the contents thereof; that the facts therein stated of my own knowledge are true, and those stated upon information and belief, I believe to be true.

HERBERT W. T. JENNER.

Subscribed and sworn to before me this 11th day of April, A. D. 1903.

J. R. YOUNG, *Clerk*,  
By L. P. WILLIAMS,  
*Ass't Clerk.*

23      *Answer of Andrew B. Duvall and Charles C. Cole.*

Filed July 27, 1903.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER	} Equity. No. 20205.
<small>vs.</small>	
HERBERT W. T. JENNER ET AL.	}

The Joint Answer of Andrew B. Duvall and Charles C. Cole, Trustees, to the Bill Filed in This Cause.

The defendants, Duvall and Cole, for answer to so much and such parts of the complainant's amended bill of complaint, as they are advised is necessary and material for them to make answer, answering say:—

It is true, as stated in said bill, that on the 3rd day of February, 1898, these defendants, by virtue of the power conferred upon them by the deed of trust from said complainant and wife to them, exhibited with the bill, sold, after a proper and legal advertisement, the premises in said deed of trust mentioned, and at the sale the defendant Herbert W. T. Jenner was the highest bidder therefor at \$17,100, and became the purchaser of said property at that price which he subsequently paid to these defendants, and received from them a conveyance for said property, and they disbursed the said money under the direction of this court in equity cause No. 19,856



of Elizabeth B. Hubbard against Andrew B. Duvall and others, and the manner and details of said disbursements are shown by the auditor's report in said last mentioned cause, which is hereby referred to and asked to be read in connection with this answer.

24 These defendants further say that the said sale was in all particulars legal, fair and proper, so far as they know or believe, and, in their judgment and opinion, the price of \$17,100 paid by the said Jenner for said property was at the time of sale the full and fair value thereof.

These defendants have no knowledge of any combination by or between the said Jenner and any other persons whomsoever to improperly acquire said property or defraud the complainant, and they believe that no such combination existed.

For further answer to said bill these defendants say that in the latter part of the year 1897 they advertised said property for sale under said deed of trust, and at said sale one Ricker, being the highest bidder, they knocked the said property down to him; that it subsequently transpired that the said Ricker had bid for the complainant, George B. Starkweather, and assigned his bid and purchase to him. And these defendants delayed for considerable time to permit and enable said Starkweather to comply with the terms of said sale to the said Ricker and take a conveyance of the property, but he was either unwilling or unable to comply with the terms of said sale, and finally he having failed to comply therewith these defendants re-advertised and re-sold the property, and in the advertisement stated that said re-sale was being made at the risk and expense of the said complainant Starkweather, and at said last mentioned sale the said Jenner became the purchaser as aforesaid.

These respondents for further answer say that they honestly and faithfully performed their duties as trustees under said deed  
25 of trust, and having fully answered all parts of said bill that they are advised and believe it is necessary for them to answer, pray to be hence dismissed with their reasonable charges in this behalf incurred.

ANDREW B. DUVALLE  
CHARLES C. COLE.

R. GOLDEN DONALDSON,  
*Sol. for Respondents.*

DISTRICT OF COLUMBIA, *To wit:*

Andrew B. Duvall and Charles C. Cole being first duly sworn, depose and say that they are the respondents named in the foregoing answer by them subscribed; that they have read said answer and know the contents thereof, and that the statements therein made of their own knowledge are true, and those therein made upon information and belief, they believe to be true.

ANDREW B. DUVALLE  
CHARLES C. COLE.

Subscribed and sworn to before me this 13th day of July, A. D.,  
1903.

WALTER F. DONALDSON,  
*Notary Public, D. C.*

[NOTARIAL SEAL.]

26

*Answers of John D. Croissant and John O. Johnson.*

Filed Oct. 30, 1903.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER	} Equity. No. 20205.
<i>vs.</i>	
HERBERT W. T. JENNER ET AL.	

The Joint and Several Answers of John D. Croissant and John O. Johnson to the Bill Exhibited Against Them in the Above Entitled Cause.

First. These defendants admit the allegations of the first paragraph.

Second. They also admit the residences of the several defendants as stated in the second paragraph, and the character in which each is sued.

Third. They admit that on the second day of May, eighteen hundred and ninety-two, and for some time prior thereto, the complainant was the equitable owner subject to deeds of trust of the real estate mentioned in said paragraph. They also admit that about that time the complainant made one or more contracts or agreements to convey said real estate to these defendants as trustees for the benefit of a certain syndicate of persons known as the Crescent Heights syndicate, and that subsequent to the making of said contracts or agreements the said complainant conveyed said real estate to them as trustees for the benefit of said syndicate, and they are advised and believe and so answer that all agreements made in relation to said land between the complainant and them mentioned in the said bill thereupon became merged in said deed and were and are null and void and have no operation at law or in equity. It is true as stated in said paragraph that the said complainant was to receive seventy-five thousand dollars (\$75,000.00) as the consideration

for said real estate free and clear of all encumbrances, but

27 the said lands were heavily encumbered at the time and for that reason the complainant was not at the time of the conveyance entitled to receive the whole of said seventy-five thousand dollars, nor did he nor has he ever become entitled to receive the whole of said sum. It is true that these defendants issued thirty shares or certificates each of the face value of twenty-five hundred dollars for the purpose of selling the same and raising the money to

pay said complainant what was due and to free the said land from encumbrances. It is also true that these defendants transferred or delivered to the said complainant eleven of said certificates in part payment of the sum that was due him as consideration for said land, but they do not admit that the complainant is at the present time, or was at the time of the filing of the amended bill in this case, the owner of said certificates or any of them, and leave complainant to make such proof of that fact as he may be advised. They also admit that their co-defendant Jenner acquired, and now owns, some of said certificates or shares, but they have no knowledge or information as to how many. They also admit that six of said certificates of shares in said property, issued by them as aforesaid, have never been sold or transferred by the defendants but still remain in their possession.

These defendants also admit the execution and delivery by the complainant of the deed of trust to Duvall and Cole upon a portion of said real estate as stated in said third paragraph, but these defendants deny that the six certificates of shares now in their possession were retained for the purpose of meeting and paying off at maturity the last mentioned deed of trust especially. They were held for the purpose of selling the same and paying the money to the use and benefit of the syndicate in such manner and for such purposes as might seem at the time to be most advantageous for the interests of the syndicate. They also deny that the value of said six certificates of shares in said syndicate was more than sufficient to have paid off and liquidated said trust at maturity, but they state the fact to be that at the maturity of said deed of trust they were wholly unable to raise any money by the sale of said certificates or any of them to any member or members of the syndicate or to any other person or persons whomsoever. These defendants also deny, upon advice and belief, that according to the terms of the trust under which they held the property it was their duty to make any assessment against the holders of the several certificates in said syndicate for the purpose of raising the money to liquidate said deed of trust. They further say that even if they had had authority to make assessment against said certificate of shares it would have been impossible for them to have raised money in that way. They had no power to compel the payment of an assessment except by the sale of the interest of the holder of the certificate therein, and at that time no one would have paid or advanced any money either by the way of purchase of said certificates or loan of money upon them as collateral. It is true as stated in said paragraph that some of the owners or holders of certificates were financially able to pay assessments but they deny that all holders were able to pay and as has been stated they had no way of enforcing payment of an assessment except by the sale of the certificate assessed, so that the financial ability of the holder was nugatory so far as enabling them to raise money by the assessment. Amongst the holders of certificates

who were financially unable to pay an assessment the complainant was conspicuous. There were others also who were financially unable to pay assessments. In such circumstances defendants were absolutely helpless to raise any money upon the certificates  
29 or by assessing the holders, and they deny the allegation of said paragraph that it was their duty on such circumstances to make any assessment whatever. They also deny upon advice and belief that neither by the terms of the deed in trust from complainant to them, nor by the terms of the certificates issued by these defendants, was it their duty to make any assessment whatever upon the certificate holders, unless requested to do so by at least, a majority, in amount of such holders, and there was no such demand or any demand whatever made upon them to make any assessment. These defendants deny the allegation in said third paragraph that they or either of them illegally or fraudulently colluded with their co-defendant Jenner for the purpose of securing him a fraudulent advantage or any advantage in the purchase and acquisition of said property. They also deny that for such purpose or any other purpose they allowed, urged, invited or insisted that the seven acre tract embraced in the said deed of trust to the said Duvall and Cole should be advertised and sold. And they say that the said sale was advertised and made by the trustees in the said deed of trust without any request or procurement on the part of these defendants or either of them. They further say that it was absolutely beyond their power as a financial proposition to raise the money out of any assets of said syndicate in order to have liquidated said deed of trust and prevented said sale. At the time of said sale they had no funds of said syndicate in their hands to have enabled them to pay the debt secured by said deed of trust. It is true, as stated in said paragraph, that said seven acre tract was sold by the said trustees, Duvall and Cole, on the third day of February, 1898, and that said co-defendant Jenner became the purchaser at said sale for the sum of seventeen thousand one hundred dollars and they are informed  
30 and believe that said Jenner paid the said trustees the said sum and received a conveyance from them for the said seven acre tract.

Fourth. They admit upon information that the complainant paid the interest on the debt secured by the deed of trust to Duvall and Cole down to May 2nd, 1892, but they deny that after that time it was the duty of these defendants as trustees to pay said interest except so far as they might have money or funds in their hands belonging to the said syndicate applicable thereto. And they further say that so long as they had or could raise funds out of the assets of the property of said syndicate they continued to pay the interest on said debt and ceased only when they had no funds applicable thereto and were unable to raise any. They deny the allegation in the fourth paragraph to the effect that it was their duty or within their power to raise money for the payment of said interest by making assessments against the certificate holders and for fuller answer

upon this point refer to the statements in their answer to the third paragraph of said bill upon that point.

Fifth. These defendants are advised that the allegations of the fifth paragraph of said bill are immaterial so far as they are concerned, and require no answer from them, but upon information and belief, they deny the allegations therein contained.

Sixth. For answer to the sixth paragraph of said bill, these defendants deny that in the transaction therein stated they colluded with the said Jenner and they deny that they by that transaction in any way gave him any advantage whatever over other members of the syndicate. That transaction is fully and accurately explained in the answer of their co-defendant Jenner to that paragraph which they have read and the contents whereof they know and they adopt the same as their answer to said paragraph the same as if it were here repeated *in heac verba*.

31 Seventh and eighth. These defendants are advised that the seventh and eighth paragraphs of said bill are statements of conclusions of law and fact, and they are advised and believe and so answer, that such conclusions are erroneous and that said paragraphs demand no further answer.

For further answer to said bill these defendants absolutely and positively deny all fraud or collusion, whatever, with their co-defendant Jenner, or anybody else, in relation to the sale by the said Duvall and Cole and the purchase by the said Jenner of the seven acre tract. They deny that they had anything whatever to do with the procurement of said sale or anything directly or indirectly to do with the purchase thereof by said Jenner, or that they had any understanding either expressed or implied with him in relation thereto.

And now having fully answered they pray to be hence dismissed with their reasonable costs in this behalf sustained.

JOHN D. CROISSANT.  
JOHN O. JOHNSON.

COLE & DONALDSON,  
*Solicitors for Respondents.*

DISTRICT OF COLUMBIA, *To wit:*

John D. Croissant and John O. Johnson, being first duly sworn, depose and say that they are the respondents named in the foregoing answer by them subscribed; that they have read said answer and know the contents thereof, and that the statements therein made of their own knowledge are true, and those there made upon information and belief, they believe to be true.

JOHN D. CROISSANT.  
JOHN O. JOHNSON.

Subscribed and sworn to before me this 3rd day of Sep., 1903.

[Seal of Walter F. Donaldson, Notary Public, District of Columbia.]

WALTER F. DONALDSON,  
*Notary Public, D. C.*

32

*Replication.*

Filed March 14, 1903

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER	} No. 20205. In Equity.
<i>vs.</i>	
HERBERT W. T. JENNER ET AL.	}

The complainant, George B. Starkweather, hereby joins issue upon the answers of the several defendants filed in this cause.

RICHARD P. EVANS AND  
EDWIN FORREST,  
*Attorneys for Complainant.*

33

*Complainant's Testimony.*

Filed June 29, 1904.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER	} In Equity. No. 20205.
<i>vs.</i>	
HERBERT W. T. JENNER ET AL.	}

WASHINGTON, D. C., *February 8, 1904*—10 o'clock a. m.

Met pursuant to notice at the office of Messrs. Padgett & Forrest, Stewart bldg., 402 Sixth street, northwest, Washington, D. C.

Present: Mr. Edwin Forrest and Mr. Richard P. Evans, solicitors for the complainant, and the complainant, Mr. C. C. Cole and Mr. B. F. Leighton, solicitors for defendants; the defendant H. W. T. Jenner, and the examiner.

Whereupon, GEORGE B. STARKWEATHER, the complainant and a witness in his own behalf, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. FORREST:

Question. Mr. Starkweather, you are the complainant in this cause? Answer. I am.

Q. And are you acquainted with the defendants Jenner, Croissant, Johnson, and Duval and Cole? A. I am.

34 Q. At any time were you the owner of certain property in the county of Washington, District of Columbia, consisting of

seven acres or more which was afterwards known as the Crescent Heights Syndicate property? A. I was.

By Mr. COLE: I object to the question and answer, because it should be proved by written evidence.

Q. At what time, if you recall, did you become the owner of that property?

Mr. COLE: Same objection to that.

A. July 17th, 1886; I think 1885 or 1886.

Q. And from whom did you purchase? A. From Virginia C. Lewis.

Mr. COLE: Same objection to that.

By Mr. FORREST: The solicitor for the complainant in connection with the complainant's testimony will offer in evidence a certified copy of the deed from Virginia C. Lewis to the complainant, and have the same appropriately marked by the examiner.

Q. After the acquisition of that property did you at any time make a disposition of it, and if so, when, and in what way?

Mr. COLE: Same objection to that.

A. On the 2nd of May, 1892, I sold it, under agreements of sale, to John O. Johnson and J. D. Croissant, trustees, for the syndicate to be formed.

Q. And did you at that time, May 2nd, 1892, have any contract or arrangement in writing with them with respect to such disposition? A. This one was forced upon me on the afternoon of May 2nd, 1892, quite contrary to the one which we agreed upon on Saturday, April 30th, 1892, which was to have been ratified Monday morning, May 2nd, but which was not.

Mr. COLE: I object to that question and answer because it is an attempt to prove by parole what can only be proved by written instruments; and I further object to so much of the answer that says that one of the agreements was forced upon him, there being no allegation in the bill which makes such proof admissible.

Q. Where is the agreement that you refer to, or who has it, of April 30th, 1892? A. It is an exhibit in my equity bill, No. 16,612, against Croissant, Johnson and Jenner.

Q. You referred to a paper under date of April 30th, 1892 as being an exhibit in 16,612. I show you a paper now dated the 30th day of April, 1892, and ask you whether or not that is the paper that you have referred to?

Mr. COLE: I object to any evidence about that paper for the reason, that it appears upon its face to be an unsigned memoranda and subsequent contracts and deeds in relation to the property have passed from Mr. Starkweather, conveying the title, rendering this paper absolutely inadmissible for any purpose.

Mr. FORREST: The solicitor for the complainant at the proper time will answer various objections made to the introduction of testimony and to papers offered in connection therewith.

A. It is.

Q. By whom, if you know, was that paper written?

Mr. COLE: Objected to for the same reason as above.

36 A. By myself chiefly and different —

Q. By yourself chiefly? A. Yes.

Q. Is there the handwriting of anybody else on that paper? A. Yes, sir.

Q. Of whom?

It is agreed between counsel that the objections heretofore made to this paper shall apply to and run through all questions asked in reference thereto.

A. The erasures on here are mine, at the suggestion of Croissant and Johnson; the additions are made in the handwriting of each of them here. It was drafted by me and submitted to them.

Q. I see by the paper, or it is apparent from its face, that it was not signed. Were or not the terms of this paper agreed or assented to by the trustees and yourself on the 30th day of April, 1892? A. They were.

Q. What was done with this paper after that date? A. I was directed by them to bring it in their office with my wife to execute the deeds on Monday morning; and to prevent the humiliation of the red flag being put upon the property on Monday morning, Croissant and Johnson went to Blair Lee's office with my request, that the sale be postponed; finding that he had left his office they wrote a letter to him stating the object of their visit, which I took to Mr. Lee's house on Pennsylvania avenue.

37 Q. I show you a paper dated April 30th, 1892 and marked as an exhibit, Complainant's Exhibit G. B. S. No. 1, in equity cause No. 16,612, and ask you whether that is the letter referred to by you as having been delivered at Mr. Lee's house?

Mr. COLE: I object to the paper because it is inadmissible under the pleadings and immaterial to any issue in this case.

A. It is.

Mr. FORREST: The two papers referred to and identified by the witness, and known as Exhibits J. O. J. and J. D. C. No. 8 and Complainant's Exhibit G. B. S., both in equity No. 16,612, are here offered in evidence.

Mr. COLE: They are objected to for the reason above.

Mr. FORREST: And as they are original exhibits in said cause, certified copies thereof by the examiner, are offered in lieu of the original.

Mr. LEIGHTON: No objection to the copies of the original but objection to the original, for the reasons above given.



Q. Are you acquainted with the handwriting of J. D. Croissant and John O. Johnson? A. Fairly well; yes, sir.

Q. Have you seen them write? A. Yes, sir.

By Mr. COLE: We admit that the letter is in the handwriting of John O. Johnson and that the signatures are the genuine signatures of Johnson and Croissant.

A. I saw it written.

Q. Now, in your testimony you have referred to an agree-  
38 ment of May 2nd, 1892; do you know where that is? A. My memory is that it was recorded with the recorder of deeds, and that it is an exhibit in 16,612—quite positive. There was also given me a receipt on May 2nd, which may be considered as an agreement; both were receipts, in fact. This one that I now refer to acknowledges the receipt of a deed for seventy thousand feet of land and conforms with the \$5,500 referred to in that draft of April 30th.

Mr. COLE: I object to the last answer because it is irresponsive to any question and also that it appears to give the contents of the written instrument and the conclusions of the witness drawn therefrom.

Q. Touching the latter part of your answer, you referred to a receipt. I show you a paper dated May 2nd, 1892, the signatures to which are admitted as those of Croissant and Johnson, and ask you whether or not that is the receipted paper referred to by you?

Mr. COLE: Objected to because the paper is irrelevant to any issue in this cause.

A. (Witness looking at paper.) It is.

Mr. FORREST: The paper referred to, and now an Exhibit G. B. S. No. 6 in equity cause No. 16,612, is here offered in evidence and a certified copy thereof filed by the examiner as an exhibit in this case, in lieu of the original.

The solicitors for the complainant say, that if found, will offer in evidence the original paper known as the agreement or contract of May 2nd, 1892, and if unable to produce the original, will offer in evidence a certified copy thereof from the office of the recorder of deeds of this District.

39 Q. Have you a copy with you of the original contract or agreement of May 2nd, 1892? A. Possibly, (witness looking through papers in his hand)—I don't seem to have it here.

Q. After the making of this agreement that you have referred to of May 2nd, 1892, what became of it—I mean by that, did you keep it or who took it? A. The trustees. It was executed before a notary—Notary Dent—and held by them and recorded by them, although contrary to their stipulation.

Mr. COLE: I object to that answer because it is immaterial to any issue in the case, and also because part of the answer is not responsive to the question.

Mr. FORREST: The solicitors for the complainant call upon the solicitor for the defendants Croissant and Johnson for the production of that agreement of May 2nd, 1892.

Mr. COLE: We decline to produce it at the present time, because we have not it. And for the further reason, I believe the defendants Croissant and Johnson have not it.

Mr. FORREST: The solicitors for the complainant, in the absence of the production of said paper call the attention of the witness to a certified copy thereof, as the same was recorded in the office of the recorder of deeds in this District, and ask you whether or no you can identify this as a true copy of the agreement of May 2nd, 1892, already referred to by you in your testimony?

Mr. COLE: I object, as it is not evidence in relation to this original contract of May 2nd, 1892, or any copy of it or the contents of it in any form, for the reason that it is immaterial to any issue in this case and because all of the matters referred to in that and in the previous contracts and papers referred to and produced, were merged and rendered immaterial in the subsequent deed that was made by Starkweather and wife to these defendants, Croissant and Johnson.

A. (Witness looking at paper.) I recognize this as a copy of the receipt or agreement of May 2nd, 1892, less the several lines which were erased at the moment of signing, which the original shows.

Q. You spoke of an erasure of several lines. Was the erasure referred to, made before the signing, and if so, is the paper I show you a true copy of the paper as signed by you and turned over to the trustees? A. It is.

Mr. LEIGHTON: The question is leading, and objected to for that reason.

Mr. FORREST: The paper referred to being Exhibit No. 6½ in equity cause No. 20,360, is here offered in evidence and being a court paper in said cause, a true copy thereof is made by the examiner and annexed hereto as part of the witness' testimony.

Mr. COLE: In addition to the other objections heretofore made this particular paper is objected to as evidence, because there is no sufficient evidence that it is a copy of the original:—the witness' evidence does not so prove it and the certificate of the recorder upon it is void, as the paper was not entitled to recordation in his office.

Q. Subsequent to May 2nd, 1892 was there any other paper or agreement entered into between you and the trustees Croissant and Johnson?

Mr. COLE: Same objection.

A. A supplemental agreement was entered into on May 27th 1892.

Q. I show you a paper dated May 27th, 1892, and the signatures

thereto of Croissant and Johnson being admitted, and ask you whether that is the paper referred to as the supplemental agreement?

Mr. COLE: Same objection, for the reason given above to the other papers.

A. (Witness looking at paper.) It is.

Q. I see that the paper that I hand you is of two detached portions. You may state whether or not they are part and parcel of the same paper originally? A. They are.

Q. Does the paper in any way bear your signature? A. It does.

Q. After the signing of that paper by you in its original form, what was done with it? A. It was retained by me; being a letter to me in a sense—in the form of a letter to me. It came to me as a letter and matured into an agreement and I signed it.

Q. How, if you know, did it become in that form—into two pieces of paper? A. Worn from this part here.

Q. In its present form it appears in two pieces of paper;  
42 how did it appear to be in that shape? A. I did not know what to do in the premises and consulted J. J. Darlington, and he introduced me to Rutledge Wilson and it was executed in this form, that it might be put of record.

When I answered a moment ago if this was the form that it was in, I referred to this here (indicating), the two pieces of this same section, not to this other.

Q. The two pieces of paper when put together, do they or not, represent the paper in its entirety as signed by the trustees and yourself? A. It does.

Mr. FORREST: The paper referred to is marked as Complainant's Exhibit G. B. S. No. 2 in equity cause 16,612, and is here offered in evidence as an exhibit and a certified copy thereof filed by the examiner in connection with the testimony of the witness.

Mr. COLE: No objection to the copy being used instead of the original, but the original is objected to upon the same grounds as the other original papers are, as heretofore introduced.

Q. Now, subsequent to the agreement of May 27th, 1892, to which your attention has been called, was there any other written agreement or contract made by you with the defendants trustees, respecting this property?

Mr. COLE: Objected to as immaterial.

A. I recall none.

Q. Now, at what time, if you know, was a conveyance made by you of the property, including the seven acre tract, involved in these proceedings? A. On June 1st, 1892, as stipulated in  
43 the agreement of May 27th, 1892; it was done under the advice of my counsel, J. J. Darlington.

Mr. COLE: The answer is objected to for the reasons above given,

and further, because he states that it was done in pursuance to a declaration of people that he is not entitled to bring in evidence.

MR. FORREST: The solicitor for the complainant in connection with the testimony of this witness offers in evidence a certified copy of the deed from the complainant to the defendant Croissant and Johnson as trustees.

Q. I show you a paper purporting to be an agreement to take certain shares, showing interests in what is known as the Crescent Heights property; and I want to know from you, at this point, when that was executed? A. (Witness looking at paper.) I cannot testify positively as to the date. I remember distinctly meeting John O. Johnson and reminding him of our agreement of May 27th, at the corner of Ninth and F streets, and he said that he would hustle right about it. Later he told me that he had gotten all the signatures in one afternoon: that was between May 27th and June 1st. Whether I signed this before or after that date, positively, I cannot at this time say.

Q. Well, did you see the paper in its present form or bearing any signatures to it, prior to the first day of June, 1892?

MR. COLE: That is objected to as leading.

A. I am not certain as to whether I did before or after; I only remember as I said, that he spoke exultantly of having carried his point in a single afternoon.

41 Q. Now, in that connection, did I understand you correctly in saying that this conversation with Johnson and the result of his efforts was prior to June 1st, 1892? A. Yes, sir. I am positive of that.

(The signatures to the paper just mentioned in the testimony of the witness, of J. D. Croissant, John O. Johnson, E. S. Parker, and Herbert W. T. Jenner, are admitted by counsel.)

Q. The paper to which I have just called your attention, I show you (showing paper to witness) and ask you whether it bears your signature? A. (Witness looking at same.) It does.

Q. I notice that your signature appears upon the side of the sheet upon which bears the names and signatures of the other persons, and I want to ask you whether or not at the time you put your signature upon the side of the paper, the paper bore the names of the other persons upon the face of it? A. It did.

Q. Who brought the paper to you for your signature? A. My memory is that it was J. O. Johnson.

Q. And after you subscribed your name to it, what became of the paper? A. Retained by the trustees.

MR. FORREST. The paper referred to and known as Exhibit J. O. J. No. 3 in equity cause No. 16,612, is here offered in evidence and a certified copy thereof is by the examiner filed with the testimony of this witness. The complainant will prove or try to prove the signatures

of the remaining witnesses upon said paper, whose signatures are not admitted.

45 Mr. COLE: Defendants object to the admission of this paper for the reasons stated in the objections to the other papers offered in evidence, and for the further reason that the signatures of all the parties have not been proven.

Q. The property described in this paper as Crescent Heights and located at the junction of 14th and Spring streets, Mt. Pleasant, D. C., is it or not a part of the property described in your bill as the seven acre tract? A. It is. This Crescent Heights comprise ten acres more or less, of which the seven acres is the major part. They were subject to distinct deeds and encumbrances of two sections.

Q. I see that upon this paper you have subscribed for thirteen shares of stock or thirteen certificate shares. Did you receive that number? A. I did not.

Q. How many did you receive? A. I think eleven is all that have been addressed to me. It was very difficult to get any at any time or in any proper way, hence the difficulty in ascertaining.

Mr. COLE: This latter part of his answer is objected to as not responsive to the interrogatory and is irrelevant.

Q. Of the eleven referred to how many are you at present the owner of or interested in? A. In seven.

Q. As a matter of fact, how many shares or certificates were issued by the trustees representing the interests in this property?

46 A. Twenty-four as the book showed, when I last referred to it.

Q. Were there any in addition to the twenty-four issued—any other shares or certificates of interests outstanding or held by any one? A. The trustees held six to meet the unpaid encumbrances as they might be due and demanded.

Q. And each share or interest represented what amount? A. One-thirtieth of the entire purchase.

Mr. COLE: That question is objected to as the certificates themselves are the best evidence.

A. \$2500 each, or one-thirtieth of the whole ten acre interest.

Mr. FORREST: The solicitor for the complainant calls upon the trustees Croissant and Johnson for the production of the six certificates referred to by the witness at the next hearing of testimony herein.

Q. Now, at the time of the subscription, or afterwards, of the different persons who took interests in this property, do you know whether or not the full face of the certificates was paid up by the owners or purchasers? A. I have no personal knowledge on that point.

Mr. FORREST: The solicitor for the complainant calls upon the solicitors for the trustees for the production of the books of the syndi-

cate showing whether or no the subscription price, set opposite of the names in the paper referred to by the different subscribers, was paid for for the number of shares set opposite their names; and further, for the books of the syndicate showing who are the present holders or owners of outstanding shares or certificates represented by the persons whose names are appended to said paper, save and excepting only such shares as were issued to the complainant Starkweather.

Q. Do you know where the six shares referred to by you, as having been in the hands of the trustees Croissant and Johnson, now are? A. J. O. Johnson was the custodian the last time I saw them, which was a number of years ago; I know nothing further.

Q. At the time of the conveyance by you of the property to Croissant and Johnson, as trustees, what encumbrances if any, by way of deeds of trust, existed upon or against the property so conveyed?

Mr. COLE: I object to that question as it calls for a condition of the title and the best evidence of that is the record itself of the encumbrances.

A. The certificate of title by the Columbia Title Insurance Company was secured by the trustees and was an exhibit, as I recall, in equity cause 16,612, which has mysteriously disappeared; as I remember the encumbrances, the original one was in January 29th, 1889 for \$7,553.34, and in which C. C. Cole and A. B. Duvall were the trustees appointed by Andrew C. Bradley, officer of the court, in connection with a trust fund of the court. I am not certain of the exact order of others; I can say there was one held by Herbert W. T. Jenner for \$2500, I think, and another a blanket trust of December 2, 1889, of \$14,560 which rested on five or six other pieces of property also, held by a friend of mine. There were one or two other minor trusts and the Mindeleff and the Hull, I think. I think it was \$4500 to Mindeleff and about \$3000 to Hull. The Mindeleff rested on the seven acres and the Hull on the three acre section. There was also a nominal lien of \$10,000 on the seven acre tract, which I personally removed.

Mr. COLE: This answer is objected to for the reason that it attempts to speak of the conditions of the title, the best evidence of which is the record itself.

Mr. FORRESTER: The solicitor for the complainant calls upon the defendants Croissant and Johnson, trustees, for the production of the certificate of title at or about the time of the purchase of this property.

Q. As to the existence of these trusts upon and against this property, were the trustees, Croissant and Johnson notified, or had they knowledge? A. The best knowledge—Johnson especially, for over a year; because he very nearly formed a syndicate for it in April, 1891.

Mr. COLE: The latter part of witness' answer is objected to as not responsive to the interrogatory propounded.

Q. For how long a time had Johnson been aware of the fact? A. For about two years, as I had frequently interviewed him to handle the property with me.

Q. Now, if you know, what disposition was made of these different trusts upon this property, at the time of your conveyance, beginning with the Jenner trust of \$2500? A. Jenner, who was also familiar with my purpose and my financial matters, took a certificate in lieu of his deed of trust; his deed of trust was merged into a certificate.

49 Q. What became of the \$2500 trust then? A. It was released.

Q. Well, when you speak of a certificate, may I ask you whether you mean by that, a transfer of one of your certificates to him in lieu of the trust? A. No, sir.

Q. When was that trust held by him satisfied in that way? A. I signed a receipt when my real estate notes to Jenner were surrendered to me canceled; I don't know from memory of the exact date—probably some weeks or months after the transfer of the property by deed.

Q. Now, as to the \$7553.34 trust, what became of that? A. It was originally made for three or four years,—my memory is, and I think it fell due on January 29, 1893, and was not paid, but as a matter of convenience was extended for a term of years by the trustees, much to the satisfaction of the lender,—the holder of the note.

Q. Who was the party secured? A. Thomas H. Gaither; possibly it was junior.

Mr. COLE: I object to so much of the witness' answer as not responsive to the interrogatory or that part of it except as to what was done with the trust.

Q. The trust to Gaither—for what purpose was that trust made, I mean by that was it money borrowed of him by you or was it in part payment of the purchase money? A. It was money held by the orphans' court in the District of Columbia, and put out as an investment at the order of the court, and the loan was approved by the court and Andrew C. Bradley afterwards judge, being the mediator in the matter, the one with whom I dealt and from whom I received the money.

50 Q. What ultimately became of that note and trust for \$7,553.34? A. A foreclosure was had under it on February 3rd, 1898.

Q. And do you know who was the purchaser or pretended purchaser of the property at that sale? A. Herbert W. T. Jenner, trustee.

Q. The defendant to this case? A. Yes, sir.

Q. Now, what became, if you know, of the trust of \$14,560 re-

ferred to by you? A. The pro rata agreed upon by the parties in interest was paid, as I was informed and have seen by the records, out of the proceeds of the sale of February 3, 1898; so that a release from the Hubbard estate was given from the trustees under that.

Q. Well, that trust, as I understand you, embraced not only the tract in controversy but other pieces of property belonging to you?

A. Several other properties.

Q. What became, if you know, of the \$4500 trust? A. That was paid.

Q. By whom? A. By Croissant and Johnson, trustees.

Q. From what? A. Out of the funds in hand from the sale of certificates.

Mr. LEIGHTON: I ask this witness, if you are speaking now  
51 from your own knowledge or from what you have heard from the defendants?

WITNESS: From the defendants.

Q. Now, as to the \$3000 trust—what became of that? A. That was paid; there was a foreclosure and the trustees Croissant and Johnson became the purchasers and paid that in a few weeks after. It was allowed to go to foreclosure on May 27th, 1892 and was paid as required by the terms of the sale.

Q. You say they became the purchasers? A. They became the purchasers, thus holding two deeds to that property, one from the complainant and his wife and the other from the trustees who sold.

Q. And that \$3000 did you say was obtained by the trustees from what source? A. I am not sure, I suppose it was from the first moneys received.

Mr. COLE: I object unless you have personal knowledge or else you were informed by the defendants themselves.

A. I was informed by the defendants themselves but my memory is not very distinct on that point.

Q. If you know, after the acquisition of the title to that property of the foreclosure of that \$3000 trust, you may state whether or not Johnson and Croissant held the property as trustees for the syndicate under that foreclosure. A. There was a recital in the deed to that effect which was repudiated by the court. Of course the sum of \$3000 is a lump sum, is not the exact amount.

Q. What consideration or sum was to be paid you by the trustees for the purchase of this property?

52 Mr. COLE: I object to that, the best evidence of that is the contract itself or the deed.

A. \$75,000 was the amount agreed upon. I was allowed to subscribe for any number less than one-half of the syndicate certificates that was the compromise measure, because the sum named was less than my asking price and less than I considered it worth,—that was the compromise reached.

Q. Well, as a matter of fact, including your subscription for cer-



tificates or thirteen shares, what did you receive for that property?

A. First, there were never more than eleven received by me. There were \$10,000 paid me, I think, on August 4th, 1892, which should have been paid on June 1st, and which should have been \$15,000.

Q. What other sums, if any, were paid you on account of this?

A. There were several small bills or judgments of two or three hundred dollars, a list of which has been presented and is an exhibit in some of the cases, the exact amount of which I cannot recall at all from memory. The transaction from beginning to end was conducted in such a dis-jointed way that it was very difficult to keep track of those things, and J. O. Johnson confessed his inability to tell where he stood in it.

Q. Well, outside of the \$10,000 cash and the eleven certificates, did you receive any thing further in the way of cash or representing cash, of the purchase?

Mr. LEIGHTON: This question is objected to so far as the defendant Jenner is concerned, as being immaterial and irrelevant  
53 he having passed out of the sale to him in the foreclosure sale.

Mr. COLE: Same objection on behalf of the defendants Croissant and Johnson.

A. I cannot recall—I don't dispute that some small amounts may have been, but I recall no cash.

Q. That being so, according to your testimony, was the amount of the purchase price, \$7500, in any way paid or satisfied to you?

Mr. COLE: That is objected to as immaterial.

A. There was a condition in the agreement, that for certain colored holdings a rebate should be made of thirty-four cents a foot, a number of such were made and a full settlement reported. But the trustees have rendered no account that I know of, although it is prayed in several of the cases that an account should be made.

Q. I show you a paper dated May 2nd, 1892, the signatures of Croissant and Johnson to which are admitted, and ask you what, if anything, was done respecting the matter set forth in that paper by the trustees?

Mr. COLE: Any evidence in relation to the letter just referred to is objected to on the same grounds that have been given in relation to the other papers introduced in evidence, preceding the deed.

A. This Exhibit No. 6 is a letter to me penned by John D. Croissant. It refers to \$1,000 paid in and the balance of \$4500 to be paid before the deed is made of record, no dollar was paid to me on that day and the deed was recorded without any \$4500 being paid. The contemplated July purchase was consummated by my

54 putting of record the deed of June 1st, to the seven acres. This is the same property, or substantially the same, as was bought in by them at trustees' sale on May 27th, 1892.

Q. I notice on the back of that letter a memoranda. In whose handwriting is that? A. It is in the complainant's, George B. Starkweather.

Q. Was that memoranda there at the time it was made and shown to Croissant and Johnson? A. They drew these instruments on May 2nd, 1892, and this was given to me when I handed them the deed which was to avoid the sale of May 2nd, but to my surprise they bid it in then, on May 2nd. This paper is all that I had to show for the deed given for the 70,000 feet; I did not know what was to be the outcome of these proceedings. I could not stand there inactive; they were letting the second sale go on on May 27th, just as I arrived on the ground and I was aware of the fact, I took my fountain pen from my pocket and scratched this; in my haste I put the date May 28th, but it was really on May 27th at the moment of sale, and I endeavored here to connect this with the transaction of May 2nd, and showed it to Croissant and Johnson, but they declined to do anything with it—to sign, as I wished them to, which explains the endorsed memoranda.

Q. You have not, Mr. Starkweather, as I understand it as yet answered my question as to whether that memoranda was known to or exhibited to Johnson and Croissant by the writer of the letter? A. It was, and as I have just said, repudiated by them. They declined to sign it, but said it was understood.

55 Mr. FORREST: The letter referred to being Exhibit G. B. S. No. 6 in equity cause, No. 16,612, with its endorsements, I here offer in evidence; and the original being of record in said cause a certified copy by the examiner is annexed hereto as part of the witness' deposition.

Mr. COLE: There is no objection to a copy of the original but the original is objected to upon the same grounds as the other papers preceding it have been objected to.

Q. In connection with this trust of \$7553.34; did you ever see the holder of the note with respect to its payment? A. I did.

Q. Did you see him more than once? A. I saw him on two or three occasions between November 1st, 1897, and February 3, 1898.

Q. Where did you see him? A. At his residence in Baltimore.

Q. What conversation, if any, did you have with him with respect to the note?

Mr. COLE: Question is objected to as irrelevant and incompetent to affect the rights of these parties.

A. I asked him why he was foreclosing and he said he did not want the money, he considered it the best investment he had—the safest; but he said the syndicate trustees had told him to foreclose, had urged him to, as they would pay no more interest, and he had

already been patient with them for over three months, as he did not wish the money—only wished the interest; did not wish to disturb that investment.

56 Mr. COLE: The answer is objected to for the further reason that it is hearsay.

Q. And at that time what was, if you know, the amount of interest due on that indebtedness? A. The semi-annual interest which was due July 29th, 1897, \$226.50, as I remember—possibly it is 53 cents.

Q. Now, prior to July 29, 1897, what knowledge, if any, have you of any assessment by the trustees Croissant and Johnson on the share or certificate holders for interests due upon that or any existing trust upon the property? A. None whatever.

Mr. COLE: That is objected to as immaterial.

A. (Continuing:) But on the contrary,—with the assurance of J. O. Johnson, they had met those recurring semi-annual interests by making loans either personally or as trustees at the Columbia bank.

Q. After July 1897, at what time, if at all, were you aware of the fact that an assessment or attempted assessment had been made upon the share or certificate holders in the syndicate by the trustees? A. I think it was in 1899; it was enjoined, I know, and the court records will show the exact date. It was enjoined as applied to me.

Q. Had you any knowledge of any assessment prior to the one that you speak of, upon any of the share or certificate holders? A. No, sir; none whatever.

Q. Outside of this subscription paper that I have shown  
57 you, Mr. Starkweather, what knowledge, if any, have you of the persons who subscribed to shares or interests in this property?

Mr. COLE: That is also objected to as immaterial.

A. Very little that I recall at this moment, that was my source of knowledge.

Q. Had you ever talked with any of the persons whose names appear upon here as to whether or no they were share holders in the syndicate?

Mr. COLE: That is objected to as immaterial and as calling for hearsay evidence.

A. I knew all about Croissant's two shares and Johnson's two shares from repeated conversations with them, and of C. A. Baker's one share and Henrietta Stewart's one share, and I had conversations with Victor Mindeleff regarding his and understood from Croissant and Johnson and others that they could handle none of these; they could get no subscriptions unless there was the absolute assurance of the purchase and control of all those colored holdings, they were

given and to be given and made on that stipulation of May 2nd, 1892. That has caused all hanging and wrangling.

Q. Subsequent to the time that you placed your name upon this subscription paper, had you any knowledge from the defendants Croissant and Johnson or the defendant Jenner, as to how much, if any, of the subscriptions to shares subscribed for here, had been paid on account thereof? A. I think it was told to me, but it was a matter that really interested me so little, that I cannot  
58 testify as to it; Johnson was entirely frank in the matter; seemed to be, in speaking to me on that matter.

Mr. FORREST: The solicitor for the complainant here calls upon the defendants Croissant and Johnson to produce at the next hearing hereof, the books or records of said syndicate, showing what part of the subscription price for the different certificates represented by said subscription list has been paid to them on account of the purchase by the several subscribers thereto.

Q. Have you any knowledge from the defendants Croissant and Johnson or Jenner as to what disposition was made of any money that came into the hands of the trustees from the sale of the shares or interests in the syndicate property? A. Yes: I recall distinctly that in my frequent interviews with defendant Jenner I told him of my dissatisfaction with the conduct of the trustees Croissant and Johnson. Jenner was thereby led to look over the accounts and told me that there was a shortage, that they were in default and suggested that my course was to file a bill for an accounting and nothing else. Whereupon I rested in uncertainty until I saw that the trustees had deeded a row of lots to Jenner for a nominal consideration, I then filed the bill in equity, 16,612, and my interviews became very few with Jenner thereafter.

Q. You have referred to the defendant Jenner. Now, I want to know what information, if any, you received from the other defendants, Croissant and Johnson, as to what disposition, if any, they made of the money realized from the subscription for the respective shares shown on the paper?

59 Mr. COLE: I object to that question because it calls for evidence that is absolutely immaterial to any issue in this cause.

A. Johnson told me that his head simply was not constructed for accounts, that Jenner was a fine accountant, and he had left it to him to unravel.

Q. You have not yet, as I take it, answered my question, Mr. Starkweather, and that is—what information, if any, you have from either Croissant or Johnson as to what amount, if any, they received from the subscribers upon these shares and what disposition, if any, they made of any sum or sums realized from such disposition?

Mr. COLE: Objections repeated.

A. Nothing from Croissant whatever in regard to Jenner and Johnson, only as I have already stated so far as I now recall.

Mr. FORREST: The solicitor for the complainant calls for the original of the power of attorney to the defendant Herbert W. T. Jenner, trustee, under date of 1897, the paper purporting to be signed by R. G. Campbell, Ellis Spear, E. S. Parker and Herbert W. T. Jenner; and on the non-production of the original will offer secondary evidence on the contents thereof.

I offer in evidence the paper known as Exhibit J. E. N. No. 7 in equity No. 20,360, and as the same has been filed of record in said cause, the examiner will make a true copy thereof and annex the same to the complainant's deposition.

Mr. LEIGHTON: We object to that paper on the grounds that it is irrelevant and immaterial to the issues.

60 Q. I show you the paper that I have just offered in evidence and ask you Mr. Starkweather, whether prior to the alleged sale of the seven acre tract in 1898, you had any knowledge of the existence of that paper? A. I had no knowledge of it. It is tangible evidence of collusion which I knew existed.

Mr. COLE: The latter part of the answer is objected to as not responsive to the interrogatory, containing a conclusion also.

Q. When did you have knowledge of the existence of this paper which I have just shown you? A. Shortly after the filing of the bill in equity of R. G. Campbell, the date of which can be ascertained.

Q. You may state whether or not you were ever approached by Mr. Jenner, as trustee, respecting the bidding in of this property as suggested in this power of attorney? A. I never was.

Q. At that time were you still the owner or interested in four certificates to which you have referred? A. I was.

Q. You spoke of the Campbell bill; do you recall who the defendant to that bill was, as to identify it? A. Herbert W. T. Jenner, possibly others—I recall no other.

Q. I show you the original bill in equity cause No. 19,192 from the files of the clerk's office and ask you whether that is the  
61 bill that you referred to? A. (Witness looking at papers) This is the bill; I have a distinct recollection of its number also.

Whereupon the further taking of testimony was here adjourned until 1.45 p. m. of the same day.

JNO. E. McNALLY,  
*Examiner in Chancery.*

JNO. E. McNALLY.

1:45 O'CLOCK, P. M.

Thereupon the further taking of testimony was resumed as follows:

By Mr. FORREST:

Q. Mr. Starkweather, have you with you one of the certificates that were issued by the trustees of an interest in this property?  
A. Yes, sir.

Q. I wish you would kindly produce it?

(Witness producing same.)

Q. Is that one of them? A. It is.

Mr. FORREST: I offer in evidence this certificate and ask the examiner to make a certified copy of the same. It is admitted that the signatures to this syndicate certificate are the original signatures of John D. Croissant and John O. Johnson and the witness.

Q. Do you know whether this is the form of certificate that was issued by the trustees to the different holders interested in this syndicate property? A. It is.

Mr. FORREST: The solicitor for the complainant calls upon  
62 the defendants Croissant and Johnson to produce at the next hearing hereof, the books and records of the syndicate showing who are the present holders of the outstanding shares or certificates in the property in controversy.

Q. In your testimony, Mr. Starkweather, you referred to a blanket trust of \$14,500. How much of that blanket trust was apportioned to this particular tract, if you know? A. That blanket trust was put on on December 2nd, 1889 and in 1890 it was decided by the representatives of the executrix that \$3,000 would be about suitable, but in 1892 it was my suggestion that \$5,000 would better be placed on it and it was agreed to.

Mr. COLE: That question and answer are objected to as being immaterial to any issue here, consequently if any such apportion was made it was probably made in writing and the writing showing it should be produced.

Q. And were the holders or owners of the evidence of indebtedness secured by that trust willing to release the same, so far as this property was concerned, upon the payment of \$5,000?

Mr. COLE: Objected to as irrelevant and immaterial to any issue here and not binding upon these defendants unless they are parties to it.

A. They were as is evidenced by the exhibit in 16,612, a letter from the executrix to the complainant.

Mr. FORREST: The letter referred to I will offer in evidence if I am able to find it among the exhibits.

Q. In the absence of the letter that you referred to, have  
63 you a copy of it? A. I have.

Q. Will you produce it? A. Yes. (Witness hands paper to counsel.)

Q. You show me what purports to be a copy of the letter that you have reference to. Who made that copy? A. My son.

Mr. FORREST: The solicitor for the complainant says that if the original of the letter referred to cannot be found he will offer testimony to show that the paper produced by witness is a true copy of the original.

Mr. COLE: We object to the original or the copy—to the copy on the ground that no proper foundation has been laid for producing the copy; and second, because it has not been proved to be a copy; and we object to the original as evidence as being immaterial and irrelevant to any issue in this cause.

Mr. FORREST: The solicitor for the complainant withdraws the request.

Q. I show you a note or letter dated December 9th, 1895 and ask you what you know about that?

Mr. COLE: I object to any evidence about that paper upon the same ground, or so far as it shows upon its face it is irrelevant to any issue in this case.

A. (Witness looking at paper.) It is from the beneficiary under that blanket trust, the widow of my friend Hubbard; it happens to be the only evidence I have at hand in proof of my assertions of repeated overtures, one of several instances of our overtures—of the  
64 the syndicate's overtures to pay that amount. Whenever previous to this they had accepted the proposition, at the last moment the trustees pleaded inability to produce the money thus it hung on; it was due to no contrariness on the part of the beneficiary under the blanket trust.

Q. This letter is addressed to "My Dear Friend." To whom was that letter sent? A. To me; I have quite an extensive correspondence and that is her usual form of expression.

Mr. FORREST: The letter is in the words and figures following:

"791 ASYLUM AVE., HARTFORD, CT.

MY DEAR FRIEND: I have been to see Mr. B. and he has sent instructions to Mr. Wright the trustee, in regard to releasing the Crescent Heights or Sanitarium property, to you, on the payment of five thousand dollars.

I earnestly hope you will be able to complete the arrangement and by doing so, we can make a beginning of closing up this long continued business.

Yours as ever,

E. B. HUBBARD.

Monday evening, Dec. 9th, 1895."

The solicitor for the complainant offers the original letter in evidence, marked Defendants' Exhibit J. O. J. and J. D. C. No. 6 as filed in equity cause, 16,612, and a true copy thereof is marked by the examiner and returned with the witness' testimony.

Mr. COLE: The admission of which we except — on the ground as hearsay, and on the further ground that it is irrelevant.

Q. Who is the Mr. B. referred to in this letter? A. Ex-  
65 Congressman John R. Buck, the attorney for the Hubbard estate.

Q. And upon the receipt of this letter did you have any communication respecting its contents with the defendants or any of them? A. I had.

Q. Which ones? A. With John O. Johnson, and urged the consummation of the transaction.

Q. In the original tract sold to the syndicate in this case, how many feet were there in it? A. Four hundred thousand feet more or less, as near as could be gathered from the varying deeds.

Q. And as I understand you, that you sold to the syndicate for a consideration of \$75,000? A. I did.

Q. At the time of the alleged sale by the trustees under the deed of trust to the defendant Jenner, what was that property worth?

Mr. COLE: Objected to as irrelevant and immaterial.

A. I can only say this: that in 1892 I had had over ten years' experience in real estate in that immediate locality, and that John O. Johnson and John D. Croissant were also real estate experts; that in 1892, we all agreed that that property was a bargain at \$75,000. Since 1892, from Florida avenue or the boundary to Spring road and from Seventh to Seventeenth streets a city has been steadily growing up, containing 25,000 inhabitants; it has reached the confines of this tract; the growth has been steady in all these  
66 years of depression, and I can see no reason why it has depreciated or deteriorated in any way. That those seven acres were purchased for about \$57,000 in 1892 or near that. Of course there are varying opinions of values in suburban realty.

Q. With respect to the location of that property, what position does the 16th Street extension or boulevard sustain? A. It crosses the western section of it and condemnation proceedings have been had and awards made.

Q. Then, if I understand you, in 1898 that property—the seven acre tract, in your opinion was worth as much as it was worth in 1892 when it was estimated to be worth, by an agreement of the parties at this sale, \$57,000? A. Yes, sir.

Q. Do you know whether it has depreciated or advanced in value since 1898?

Mr. COLE: All these questions upon the subject of value, tending to show or effect the value, are objected to as immaterial in this



case, and we claim the benefit of that objection as to all questions without repeating it.

A. I think its tendency has been upward since the sale.

Q. With respect to the position of this property, has there been any change since 1892, concerning street car facilities in getting to it? A. The main part of it near the branch of the Columbia road, a branch of the Metropolitan road, increases the facilities of rapid transit from that property; and it comes some squares nearer than it was before, and on the other, the 14th Street line, the street  
67 railway has been greatly improved so that the facilities are in every way much better than they were, and as a consequence it is being built up in all sections out there.

Q. In the bill, as amended, filed in this cause, you charge, in substance, unlawful authority on the part of Jenner and the two trustees, Croissant and Johnson, to sell the property covered by the \$7,500 deed of trust, and the subject-matter of this suit. What knowledge or information had you upon which to base that charge?

Mr. COLE: The question, so far as it asks for his opinion is objected to and also so far as it relates to his knowledge, unless that knowledge shall be personal knowledge of facts.

A. From the date of the filing of my original equity suit, 16,612 against the defendants Croissant and Johnson and Jenner, their whole conduct warranted that assumption that there was collusion and conspiracy to defraud. In October, 1897, it reached me from the street—current gossip—that there was to be a sale of real estate and Starkweather would probably be the purchaser, as he had plenty of money. I felt that it meant mischief but could not conceive how or where; I watched the advertisements in the daily papers and on November 1st, saw the Cole-Duval advertisement of sale under the original trust. I thereupon went to Johnson to ascertain the reason for it and he informed me that he was not going to bother, to pay any more interest, he was tired of paying the interest—the semi-annual interest of \$226 and some cents. He told me he was going to  
68 rally and get a great crowd there. I was informed on the street that no one was going there, and I sought legal advice.

Mr. COLE: We object to all that answer except the conversation it purports to be with the defendant Johnson, and object to that as any evidence against any one but Johnson; and as to the balance of the answer we object to the whole of it as being hearsay and conclusions of the witness from rumors, and move to strike out all of the answer except the conversations with Johnson, aforesaid.

Q. You said something in your testimony, however, about having visited Baltimore to see the owner or holder of the note. Was that before or after this interview with Johnson that you have referred to? A. It was after.

Q. Now, outside of what you have stated as to your conversation

with Johnson, was there any other fact or facts brought to your knowledge or of which you have information, which led you to make the charge that I have called your attention to in this bill?

Mr. COLE: We object to that question as being too general, and framed so that the witness might give conclusions of hearsay in answer to it.

A. Mr. Thomas H. Gaither received me pleasantly, stated that he greatly regretted it, that he did not want the money, that he wanted it to remain there but the trustees declared they would not pay any more interest, implored him to sell them out, wanted to be sold out. He wanted his money to remain there as an investment, was more than satisfied with it, did not want to cause dissatisfaction or loss to anybody; all he wanted was his interest. At my request Thomas

69 H. Gaither gave to me a writing requiring a postponement of the sale pending an adjustment of the question, which I brought over and delivered at the court house here to trustee, C. C. Cole and delay was given out of regard to the relation of the parties and afterwards an extension was given.

Mr. COLE: We object to that answer as being fully hearsay and move to strike it out.

Q. I will ask you also whether or no, prior to the filing of this amended bill in this cause, you had seen the bill and proceedings taken in the case of Campbell against Jenner known as 19,192?

Mr. FORREST: The solicitor for the complainant calls for the production of the note in question.

Mr. COLE: The answer that has just been given there is objected to unless the memoranda in writing referred to be produced.

A. It was left in the hands of the trustee, Cole. I had what seemed to give me the missing link in the chain of evidence of conspiracy to defraud.

Mr. LEIGHTON: That last statement is objected to as a conclusion of the witness and I move to strike it out.

Q. In this certificate which has been made an exhibit in this cause, and which is on a printed form, and which you have testified is similar to the other certificates which were issued, it is recited that the certificate holder for one share has contributed \$2500 and further that in consideration of the premises and said payment receipt whereof is hereby acknowledged; the certificate is issued and that appears over the signatures of Croissant and Johnson, as trustees. Taking, for the purpose of this question, that statement to be  
70 true, do you know what became of the \$2500 received by Johnson and Croissant for each one of the seventeen certificates or shares issued by them of interest in this property?

Mr. COLE: That is objected to as not having any bearing what-

ever upon any issue in this cause. A. I have no personal knowledge of its disposal.

Q. Now it appears from your testimony that between three and four thousand dollars were paid by the trustees to take up the trust controlled by Blair Lee; between three and four thousand dollars were used in acquiring the colored holdings, and ten thousand dollars paid to you and some two or three thousand dollars used in taking up minor judgments or claims against you. Now, outside of those payments, do you know of any other sums of money paid by the trustees Croissant and Johnson concerning the acquisition of outstanding liens on this property or distribution of money for any purpose concerning this property?

Mr. COLE: That is objected to because leading and also upon the ground upon which the last preceding question was objected to.

A. I recall none at this time. Although the itemized statement might show, but it does not occur to me at this moment.

Q. Have you at any time ever received an accounting from the trustees for their stewardship with respect to this property?

Mr. LEIGHTON: That is objected to as irrelevant to any issue here.

A. I have not.

Q. At this last sale, to Jenner, were you present? A. I was.

71

Q. Do you recall who the bidders were?

Mr. LEIGHTON: Question objected to as irrelevant.

A. H. W. T. Jenner and a representative of mine, one Collins.

Q. Any one else? A. No, sir; only three bidders; there were two or three sales and defaults and re-advertisements, but at each there were but the two bidders; the representative of mine and the representative of the clique. And Mr. Wright to watch the Hubbard interest.

Q. Did you know in his lifetime, Robert G. Campbell? A. I did, very well.

Q. Was he present at this sale? A. He was present every time.

Q. Did he make any bid on the property? A. None whatever, I rode up with him once or twice.

Q. What was the price at which the property was knocked down to Jenner at that sale? A. \$17,100, as trustee.

Q. After the bidding in of that property by the defendant Jenner did he call upon you for any contribution towards the payment of any purchase money?

Mr. LEIGHTON: The question is objected to as irrelevant.

A. He did not; nor ever spoke to me as I saw him on the street, for years; he has not spoken to me in six years.

72 Q. In the sixth paragraph of the bill you refer to a conveyance of Croissant and Johnson to the defendant Jenner of a certain portion of the ten acre tract for a wholly nominal consideration. What do you know about that transaction? A. I know that I saw in the court records a conveyance of a series of lots on Spring street by Croissant and Johnson to Jenner. I at once went to J. O. Johnson for an explanation and I learned from him that there had been a meeting of the syndicate, without notification to me, and that there was a question up to raise means to meet some \$60 in taxes that were due on the property, and that Jenner volunteered to pay this for the deed to him of these 20 or more lots; that he had given a verbal understanding that whenever he sold them he would divide up—give one-half to the trustees or the syndicate or somebody, and that all present thought it was the nicest thing they had ever heard of, and he tried to convince me of the wonderful streak of good luck and I at once filed the suit for the re-conveyance, which Justice Cox, on May 6th, 1896 declared must be reconveyed to the syndicate, and it was later by Jenner.

Mr. LEIGHTON: So much of that answer as purports to be the statement of Johnson is objected to, and so far as it relates to the other defendants, as hearsay.

Q. Were you, as certificate holder, or party interested, notified to appear at any such meeting? A. I was not; on one or two occasions I was notified by mail, by a postal, which did not reach me until a day or two after the meeting: I never was at a syndicate meeting—there was a little informal meeting once at the Columbia bank, I think, it was not a syndicate meeting when three of us were there.

73 Q. Were you present at the meeting of the syndicate referred to by you in your testimony in conversation with Johnson, in which it was agreed that this conveyance should be made to Jenner, or were you notified of any such meeting? A. I was not present and had no notification whatever.

Q. In your testimony you speak of a certain assessment attempted to be levied against you to pay certain debts or expenses incurred by the trustees with respect to that, did you take any action by suit? A. I did.

Q. Do you remember the number of the suit? A. It is not present to me at this moment.

Q. Now, did you or not also take action by proceedings in court with respect to the sale of a portion of this ten acre tract under a trust given to Warner and Giesy as trustees? A. I did and enjoined the proceeding.

Q. Do you recall what case that was, the number of it? A. I don't; I am mixed on some of these numbers.

Mr. FORREST: The solicitor for the complainant, in connection with the testimony of this witness, offers in evidence the original

bill, answers thereto, testimony and decree made in equity cause, 20,360, properly returning the sale of a portion of the ten acre tract for default of payment of the certain alleged debt on the deed of trust.

74 Mr. COLE: We object to that as being irrelevant to any issue here.

Mr. FORREST: The solicitor for the complainant also offers in evidence the original bill, answers thereto and decree in case of Starkweather vs. Jenner, Johnson *et al.* and known as equity No. —, pending in the supreme court of the District.

Mr. COLE: We object to that on the same ground that we object to the last preceding question.

Q. Mr. Starkweather, you are the complainant in this cause, and if there is any other matter or thing pertinent or material to these issues, or the issue involved in the controversy, you at liberty to so state it? A. Only what occurs to me as showing the attitude and animus of the defendant Jenner, and of his purpose—the last words that he ever spoke to me. Jenner and Johnson had both informed me that he was to pay taxes, some \$60, to the syndicate in consideration of which the syndicate deeded him some twenty odd lots. The last remark I remember from Jenner was, he said that he thought he had done up the Widow Hubbard pretty well, for he had tax deeds to the whole property, thus cutting the blanket trust out. It seems from what he said and the records, that he had not paid the taxes for the syndicate, but had bought them in at the tax sale, and held a hand over the syndicate and all concerned, as he thought.

Mr. LEIGHTON: To so much of this answer as does not state what Mr. Jenner said is objected to as it is argumentative and does not reveal any fact but really the conclusions of the witness.

75 Cross examination.

By Mr. LEIGHTON:

Q. Mr. Starkweather, when did you buy this ten acre tract that was subsequently deeded to the syndicate? A. I bought it in July, either 1885 or 1886, that is the seven acre portion, and the other I think previously, one or two different sales—purchases that I made.

Q. Private or public? A. It was very indirect; there was an insurance company connected with it, lots were procured in several ways.

Q. What did the seven acre tract cost you? A. I do not recall how much it cost me, how much altogether I spent, I remember this which I have often repeated, that I spent over one hundred dollars in trying to learn and untangle the title and those connected with it;—I bought it in about 1885.

Q. I am simply asking you if you recollect what the property cost you? A. I bought up claims, outstanding claims; the insurance company held many lots; they had land, several thousand

dollars' worth, and they sold and turned it over to me at quite a reduction. I forget what it was. Some other parties in New York sold out a series, I bought those out and became the sole owner; I could not tell what it cost; I was dealing with other things, I ascertained enough to know that I had a satisfactory title to the ten acres.

76 Q. This trust, under which this seven-acre tract was ultimately sold out, in controversy in this suit was put upon the property by you after you obtained title? A. Yes.

Q. And you sold that property to the syndicate subject to that encumbrance and other encumbrances? A. I did.

Q. Subject to that trust and to other encumbrances that were against it? A. The indebtedness that was on it.

Q. What that trust secured never was paid by you—was it? A. No, sir; I did not pay it in cash.

Q. It never was paid off in point of fact by you—was it? A. I shook the burden off from my shoulders through the agreement of May, 1892, which is in evidence.

Q. But you never paid the holder of the note secured by that deed of trust, the money that you had borrowed from him, did you? A. I certainly did not other than as by the agreement.

Q. And it was for a default in the payment of that note or the interest on it, that the property was sold by the trustees? A. The trustees for the syndicate failed to look after that.

Q. And you failed to look after it? A. It did not relate to me to do it.

Q. And the owner of the note directed the trustees to sell? A. After the provocation which I have indicated; after three months' delay.

77 Q. The party holding the note directed the trustees, Cole and Duvall to sell out the property, to pay off the indebtedness? A. I have no knowledge of the fact.

Q. You were present at the time of the sale? A. I was present.

Q. At the time it was struck off to Jenner? A. I was.

Q. And you made bids there? A. My representative did.

Q. How long prior to the sale did you know that it was to take place, when and how did you know it was to be sold? A. On the evening of November 1st, 1897, I read the sale was to be on November 13th, 1897; I was aware of it on that first evening.

Q. And you were aware of it from time to time? A. Yes, sir.

Q. Did you make any effort yourself to obtain purchasers or bidders at that auction? A. I sought legal advice and proceeded accordingly.

Q. Did you make any effort yourself to obtain bidders at that auction? A. I think I did. It strikes me in a way now—yes, I did, I recall distinctly.

Q. But you went to see people whom you thought might take an interest in it and requested them to come out there to bid? A. I saw people and travelled from November 1st or second to February 1st or second, back and forth, probably one thousand miles and in-

volved myself in thousands and almost ten thousand dollars on that very point.

78 Q. Trying to get persons to purchase this property? A. Trying to save that property.

Q. But didn't succeed? A. No, sir.

Q. You could not get anybody to take hold of it and pay the encumbrances against it? A. I did not strike anybody whom I could interest in that way. I had parties here working on certain things and others in New York.

Q. You knew that Mr. Jenner was going to bid on this property, after the sale took place? A. Judging from the past, I anticipated that.

Q. And you had somebody there to bid for you? A. I had exhausted myself.

Q. This property was put up for sale under this trust by the trustees? A. Yes, sir.

Q. You were present at both sales? A. Yes, sir.

Q. At the first sale your man Collins bid it in? A. He bid it in.

Q. Was Jenner at that sale? A. He was.

Q. Did he bid any? A. He did.

Q. Why didn't you complete your purchase? A. I spent very nearly \$1600 directly from cash with my friends to save that for the syndicate; keeping it alive from November 13th to February 3d.

79 Q. The trustees gave you time to complete your purchase, if you had been able to have done so? A. On the payment of \$300 at the time extensions were given, I was brought from New York by a telegram; about January 30th or 31st; I was completing arrangements there when I received a telegram that the necessary money was secured here and came down, and it proved to be an error, and I was unable to give my representative any security which would save the cause.

Q. Well, I understand that this trouble that you took with parties that you say acquiesced to purchase this property, was all taken after the first sale at public auction? A. All my trouble was after November 1st, after the advertisement in the paper.

Q. You were trying to get somebody to help you out in the purchase? A. I was only in a representative capacity from the beginning.

Q. Did you have any conversation with other members of the syndicate, and tell them in what capacity were you acting?

MR. EVANS: I object to that question.

A. From the first month of the extension—

Q. At this sale—at the time of the sale did you advise the other members of the syndicate that you were acting in their interests in the purchase of this property?

MR. EVANS: I object to the manner of counsel on the cross-examination of putting questions to the witness, and while he is answer-

ing, stopping him and remodeling his questions, instead of the witness being allowed to answer the question fully.

80 A. In reply to your question I will say, that from the summer of 1892—in the spring or summer of 1892 when the syndicate was formed, from about that time there had been an influence exerted against me so that people who previously had been on good terms with me—members of the syndicate—utterly ignored me and I was not on speaking terms with but one or two of them at all; I simply was not informed of the meetings, was treated as an outlaw and an outcast; I could not, with respect, approach those people.

Q. So, as matter of fact, you did not notify them that you were acting in the syndicate's interest? A. They treated me as a common enemy. The representations under which they were induced into that syndicate and the conditions upon which the trustees led me to give those deeds had never been complied with by those trustees and in their self defense, they sought in some way to throw the blame on to me and that has been the effort all around, to pretend that I defrauded them. I have heard the accusation talked about, of how I defrauded or did one thing or another. As a matter of fact those trustees who insisted upon having \$5,000 for their services, performed nothing they promised others and nothing they promised touching themselves. They roped in many, that is what caused all complaint.

Q. Those they roped in, you refer to the other members of the syndicate? A. Yes, square decent men I knew; as, for example, Gen. Spear, a neighbor of mine, he is utterly against me, absolutely; I would not attempt to go into his office and expect decent treatment.

81 Q. These men were under the impression that the trustees paid too much for this property? A. I have heard that suggested—that is not it; the whole thing hinged on the purchase of the colored holdings, without which they would not invest a cent—it was the colored holdings; they worked it in one way and talked it in another, any way to get their commissions.

Q. Have the trustees, Croissant and Johnson made an accounting? A. Croissant and Johnson agreed with me to pay on May 2, \$5,000, and I was to get control of these colored holdings; they, from all appearance hadn't five thousand cents to their names, and they undertook the whole thing without a dollar. I received not a dollar for that deed to 70,000 feet. They paid nothing of the \$1,000 deposit to the auctioneer; they paid nothing they promised to pay, but let all go by default and they would have never done anything to save that 70,000 feet of land had it not been that I, on seeing this, arranged at Wood's bank on F street to get a loan of \$3,000 to take up that auction indebtedness; I also arranged with Dr. Hammond to take his old sanitarium and build a new one; such as he wanted, on this tract, as exhibits show; I next outlined a syndicate



and every man I went to subscribed as I indicated. I went to John O. Johnson, that was about the 16th of May. Passing along I felt very comfortable with myself, and jocularly asked him to join the new syndicate—as they told me the deal was off, over and over; but on seeing my sanitarium deal he declared theirs was not off and sought Croissant.

82 I was going up to Wood's bank to get the money, when young Wood, who is now in the Bowling Green building in New York, said he wanted to make one little inquiry of John O. Johnson it proved, who declared that their deal was not off, that they were in it still, and thus my new project failed. All this is in evidence and I have much proof on this subject in 16,612; indeed a history of the whole thing. It has been one simple struggle from beginning to end. They were penniless and powerless, they were without money and they personally appropriated subscriptions as Jenner discovered later. I had been a borrower of Jenner at usurious rates for years. That Hubbard estate has not been settled yet; Jenner knew my connection with the estate and knew my personal affairs, he knew all parties in the case; he wedged himself in on the trustees, bulldozed them, went up there in Hartford, Connecticut, went to Buck went to Hill's the banker, and to Mrs. Hubbard; as they told me both here and there. And from that hour I have been ignored by them all. I don't know all that was done, I only know that the pleasantest relations from my childhood up were crushed. It is simply a case of hold up.

Mr. LEIGHTON: To all of that answer, except such as states that you had no relations with the other members of the syndicate, I object as not responsive to my interrogatory, and move to strike the testimony from the record.

Mr. EVANS: It is called for by the question and appears to be responsive thereto.

Q. Coming to the second sale; you were present at that sale when the property was struck off to Jenner? A. I was.

Q. You had a representative there? A. I did.

Q. He offer bids? A. He did.

Q. The property was finally struck off by the trustees to Jenner? A. Yes, sir.

Q. He was the highest and the best bidder? A. He was not the highest; my man was the highest bidder; but his deposit was not satisfactory; as I told you I had been disappointed in many ways and was called away from the people in New York, with whom I was effecting a deal, by a telegram from my representative here, Campbell G. Berryman, telling me that he had the money. When I came here, on the dash, he told me how it had slipped and I went up to that auction, not as I wanted to be, but much as I had been time and time before; I had certain securities which had cost me good money and I tendered those for the deposit; I had done that time and time again in my previous tribulations up there at auc-

tions and the auctioneer had taken my note or check when he knew it had no deposit back of it and after it was closed up; he left with one B. F. Leighton a number of evidences of indebtedness which Mr. Leighton turned over to me and I still have them with Mr. Leighton's letter. That is why I went up there without the one thousand dollars.

Q. You were not able to make a deposit? A. Not to the satisfaction of the auctioneer or the trustees.

Q. You were not able to make the deposit required under the terms of sale? A. I was not acting for myself.

Mr. LEIGHTON: The latter part of the answer is objected to as not responsive to my interrogatory and I move to strike it out.

Q. Coming to the formation of this syndicate. You had eleven shares of the stock? A. Eleven certificates were issued to me, I think but I could not swear to it.

Q. Is not that what you have sworn to? A. I have given that as my impression. The foundation was laid at the first or second of May, 1892; I was so run down I went away for a month in the summer; there was nothing in the world—

Q. Wasn't the first certificate issued, say sometime in November? A. Yes, then they delayed, went to making excuses and it was for a period of six months when I went after them again before threatening to take action, and that is why it has been very hard for me to get—

Q. I want to know, Mr. Starkweather, how many shares or certificates were issued to you, if you know? A. I think it was eleven.

Q. You are not positive of that? A. Looking over the account, I think it was eleven.

Q. You kept no record yourself? A. Yes, and no; it was a broken record, it came in such a peculiar, disjointed way.

Q. What became of the eleven shares which you say were issued to you? A. Two were kept by Croissant and Johnson as their pay for doing what they never have done.

Q. As their commission? A. Yes, sir.

Q. For the sale of this? A. They agreed to do certain things, none or few of which they have done, but they kept those shares.

Mr. LEIGHTON: To so much of the answer as not responsive to my interrogatory, I object to and move to strike out.

Q. Two others were bought by Jenner? A. And bought by him at his own price. I think there were two purchases; I had numerous transactions with Jenner.

Q. Do you know, or are you sure that you sold two to Jenner? A. I am sure that I sold him one, not only whole but partially, I know I have the evidence of that; I think that both went to Jenner, one did in partial—quarter, or half, and wholly at his own price, for various amounts I got from him from time to time.

Q. That was before you had any trouble with Jenner? A. That was before the sale of the seven acres.

Q. That disposed of four, two went to the trustees and two went to Jenner. There are seven others, where are they? A. There were obligations pending, and by their refusing to do what they had agreed, I had to hypothecate them and they are now resting in friendly hands, subject to me.

86 Q. In whose hands are they? A. I don't know that I should state it this moment.

Q. Do you mean that you do not recollect or decline to state? A. I do not know that it is necessary.

Q. You decline to state? A. There are one or two points in the case and I might do an injustice to a party or two involved. I should prefer to be legally advised before I proceed.

Mr. EVANS: I object to the question as being absolutely immaterial to the issue involved here, so far as Mr. Starkweather having an equitable interest in this certificate that question would be proper, but so far as inquiring in the fact as to who may be holding these certificates at the present time in trust or otherwise, certainly the question is irrelevant.

Mr. LEIGHTON:

Q. Did you sell both—these three certificates, or you obtain a loan of money on them? A. I did.

Q. In what sum?

Mr. EVANS: I object, as being immaterial and irrelevant to the issues in this case.

A. In a thousand dollars each.

Q. Each, or the whole of them? A. Each.

Q. With whom? A. Robert G. Campbell.

Q. Three of them then were transferred to Campbell, and are now owned by Campbell? A. They are in that gentleman's protection, not owned, I claim—

87 Q. But you gave them during the lifetime of Campbell to Campbell for a loan of that money? A. Yes, sir.

Q. And they now belong to his estate? A. There is an interest in them in his estate.

Q. And they have possession of them? A. Yes, sir; they have possession of them.

Q. Now, the other four, where are they? A. I was compelled to hypothecate them.

Q. With whom? A. Yerkes and Baker and with other collateral &c.

Q. They are now with Yerkes and Baker, are they? A. They are; with the late firm of Yerkes and Baker.

Q. What did you borrow on those? A. Why, I cannot tell, really, because there have been—it is impossible to tell because it

has been largely paid off and I have given other collateral back and forth.

Q. Yerkes and Baker have a judgment of \$5,000 against you, haven't they?

Mr. EVANS: I object to that question as being absolutely irrelevant and away from this case.

A. There is an account between us and there is no better friend probably in the District of Columbia to-day than that firm to complainant; our relations are amicable.

Q. Haven't they sold out your interests under those four \$8 shares, under the judgment? A. Never have and never will.

I speak with some confidence: I can show you one right here in my pocket, of those shares.

Q. Mr. Starkweather, at one time you spoke of the purchase of some of this property by the defendant Jenner? A. Yes, sir.

Q. Don't you know that that conveyance was made to him to secure an advance of money that Mr. Jenner made to the trustees for the purpose of paying the indebtedness of the syndicate, and that the title to the property was held as a trustee by Jenner, in the nature of a trust? A. I know that it was not. They may have represented it in that way; they never proceeded in that way, I know from the record and what was told me by others.

Q. The title to the property was by him subsequently re-conveyed? A. After Justice Cox told him that it must be.

Q. After this sale under the deed of trust to Jenner, did you ever offer to contribute your proportion of the cost price of the property and ask to participate in the sale? A. I never could see or speak to them in any way or shape; they would not speak to me or have any communication with me; people don't usually, after wronging one. I hesitated a little in speaking to some of the persons—with H. W. T. Jenner; it is a matter of over ten years, he has dogged my steps and transactions with persons; he is the one who has been trying to do me for over ten years.

89 Mr. LEIGHTON: The latter part of the answer to my question is objected to and I move to strike it out.

The further taking of testimony was here adjourned until to-morrow, February 9th, 1904, at 11 o'clock a. m., to meet at the same place.

JNO. E. McNALLY,  
*Examiner in Chancery.*

TUESDAY, *February 9th, 1904*—11 o'clock a. m.

Met pursuant to adjournment.

Present : Mr. Forrest and Mr. Evans, solicitors for complainant ; Mr. Leighton and Mr. Donaldson, solicitors for defendants ; the complainant, George B. Starkweather, and the defendant Jenner.

Whereupon, GEORGE B. STARKWEATHER, resumed the stand for further cross-examination.

By MR. LEIGHTON :

Q. Mr. Starkweather, as I understand, at the time of the purchase of this property of the Crescent Heights syndicate, it was subject to four deeds of trust, at least ? A. Probably four.

Q. The second deed of trust was held by Jenner for \$2500 and that was paid off by his taking a share of stock ? A. Yes.

90 Q. And the third deed of trust was held by Mendelev, and that was paid off by stock ? A. Yes, I think so ; I am not positive.

Q. It was paid off in some way ? A. Yes, sir.

Q. After the sale was made ? A. Yes, sir.

Q. The fourth deed of trust was the blanket trust of \$14,000, that was held by the Hubbard estate ? A. Yes, sir.

Q. The \$14,000 was put upon the property when, do you recollect ? A. December 2nd, 1889.

Q. About the time you purchased it ? A. Four or five years after.

Q. Wasn't it to secure the payment of part of the purchase money on this very property ? A. My friend Hubbard gave me money, handed me money to do whatever I saw fit with it and asked no security or protection whatever ; and I feared that something might come in the future, whereby he would be a loser. What money of his had gone in to different purposes, and there was a certain amount went in there—I do not remember what amount, of \$14,560 I considered, and figured up at the time from my memoranda I had, what had gone in on that property.

Q. Mr. Hubbard being the payee of that note, that was security of \$14,560—his note was secured by a trust on this property and other property ? A. Yes, sir.

91 Q. And Mr. Hubbard was the party secured ? A. Yes, sir.

Q. He died ? A. Yes, sir.

Q. Who was his executor ? A. He left a will ; his widow was the executrix of the estate, the one who wrote this letter which was exhibited yesterday.

Q. In this letter of February 9th, 1895, of Mrs. Hubbard, she refers to Mr. Wright as trustee. Is that the Wright as trustee under the deed of trust securing the note ? A. Yes, sir.

Q. One of the trustees ? A. Mr. Wright was a relative of Hubbard, and one of his sons was co-trustee with him, and the other son was the attorney, doubtless referred to by her—not the trustee,

there were three Wrights, two trustees and one attorney for the Hubbard estate.

Q. Do you know whether or not the Hubbard estate was at that time settled—at the time this note was written? A. Which note?

Q. This letter of Mrs. Hubbard, at the time it was written was it settled? A. Yes, sir.

Q. Any action taken in connection with the matters here? A. That really I do not know, the details of the settlement of that estate.

Q. Well, how did she happen to write this letter to you?

92 A. Simply because somebody, Johnson or Croissant, would tell me they were ready, if I would communicate with them.

Q. It was an answer in response to a letter from you that she wrote this? A. It was.

Q. This is all the statement that you got in writing in respect to releasing this \$14,000 mortgage for \$5,000, so far as the *Croissant Heights* property was concerned? A. I have a large correspondence of hers and her husband's, and I know that more than once it was agreed to; it was agreed to personally, individually there.

Q. Every body? A. Probably, and I acquiesced. Next that I had, two or three letters on the subject, probably the first one—my memory is that the first one was agreed that it would be but equitable for \$3,000 of the blanket trust to rest upon this property, the seven acres.

Q. Don't you know, as a matter of fact, that the Hubbard estate declined to take from the trustees of the Crescent Heights syndicate the sum of \$5,000 releasing the Crescent Heights property? A. No, sir; rather the contrary.

Q. You deny that that is the fact? A. I have further reason to believe it is not a fact: I made many visits there and I know from experience. And when Croissant and Johnson would make the overtures to me to arrange with our northern parties there, and I would arrange with them, and just as in this case, they would want to know later what had become of it.

93 Q. Has any part of that \$14,000 been paid by you? A.

When the Hubbard estate would wish to know when that would be settled, I would go to Croissant and Johnson —

Q. Has any part been paid by you? A. Yes, sir, indirectly nearly all of it.

Q. Some of it still remains unpaid? A. Yes, sir; principally owing to a misunderstanding of the situation on their part, which they afterwards regretted greatly. My friend died on January 11th, 1890, and I could have paid that off—I could have paid \$150,000 to them that first spring; they merely said they were trying to decide.

Q. Hasn't a portion of this \$14,000 note—the Hubbard note, been paid out of the proceeds of the sale of the seven-acre tract in controversy in this suit? A. I have been so informed.

Q. Don't you know that that is a fact? A. I feel confident—I

don't know it of my own knowledge, no more than that I filed objections to the confirmation of this sale made by Cole and Duvall.

Mr. LEIGHTON: That is objected to as immaterial.

Q. You did not file any objections to the confirmation of the sale made by Duvall and Cole? A. I objected too, for the further reason, as I recall, that the sale by Duvall and Cole was not made in pursuance to any judicial proceedings, nor did they make any return thereof to the court nor was there any opportunity given to  
94 object formally to the ratification of any such sale, nor was any such sale ratified by the court. The \$1600 or more that I have blown in to protect this property in the weeks preceding the sale, had so exhausted my resources that I had no means to enter new legal proceedings at that moment.

Q. Well, you did not take any legal steps at the time the sale was made to resist its confirmation?

Mr. FORREST: That is objected to as immaterial.

A. I did not.

Q. You got out of this property, the Cresecent Heights property, the sum of \$10,000 and the \$3,000 that Campbell advanced to you and what you borrowed from Yerkes and Baker; you got that in cash out of the Cresecent Heights property have you not? A. Yes, sir.

Q. Besides the further sums that you mentioned in your testimony yesterday? A. Yes, sir; whatever I mentioned, I think has been true.

Q. Mr. Starkweather you said yesterday that there were six shares left in the treasury to pay this indebtedness. Now, was there any sale for this stock—any market for it?

Mr. FORREST: That is objected to as immaterial.

A. I had succeeded in selling some at somewhat of a sacrifice, as I said yesterday; when I found they were giving away twenty lots for ten dollars I instituted suit and J. O. Johnson told me that after I filed the suit people did not like to invest in litigation, and it had injured the market value or salability of the certificates.

95 Q. That was through 18612? A. That was.

Q. That was particularly about your bringing of that suit? A. By their disposing of those twenty lots, and the further fact that as J. O. Johnson himself told me, that no one would buy in the syndicate unless those front colored holdings were all included in the sale, and as it is, a year or two had passed and it was found that they were not controlled by the syndicate, that also impaired their negotiability.

Q. So from one cause or another it was impossible to market the shares of stock in the treasury? A. Owing to the conduct of the trustees, Croissant and Johnson, it had become exceedingly difficult, I judge.

Q. Well, didn't the condition of the real estate market at that

time have something to do with it? A. Not seriously. With those two—I could have sold every share of mine, with those two obstacles removed. The litigation was nothing.

Q. Could you have sold it to any person who knew of the condition of the property, with the encumbrances on it? A. Yes, sir; my best customer was Herbert W. T. Jenner, and he knew of it better than myself.

Q. Now, you complain in your bill of failure on the part of the trustees to levy assessments. Isn't it true that the members of the syndicate declined to pay assessments when they were levied, you among the number? A. I knew nothing of what the others did—  
 96 little or nothing—I know that as regards myself, I stood upon what the trustees had informed me and what I obtained from the subscription list.

Q. Well, you were not in any financial condition at any time to respond to an assessment on your certificates, Mr. Starkweather?

Mr. FORREST: That is objected to as immaterial.

A. I certainly was.

Q. Isn't it true that there are judgments against you on the law side of the court in the supreme court of the District of Columbia?

Mr. FORREST: That is objected to as immaterial, and as having no bearing upon the issues involved.

A. I think there are one or two.

Q. As a matter of fact you did not pay any assessments that were levied against you? A. Not one assessment; I was notified of one assessment; I asked for an itemized statement of the basis of this assessment; and caused nearly every item, if not every last one of them, objected to by me in court under legal advice and sustained, I think, by the court; for example, that in one of the decisions in my favor the several defendants were required to pay the costs, amounting to some \$200, and they put that in and wanted to assess me to pay for that. That is a sample of the kind of assessment that was made. And when asked how they figured out these amounts, their attorney said a little more or less would make no difference for it would leave something in the treasury; Justice Bradley said it must be balanced to the cent. That is the only assessment that I know that has been attempted.

97 Redirect examination.

By Mr. FORREST:

Q. First, touching the questions asked you about assessments. Was there any other assessment ever attempted to be made or levied upon your interests, save the one that you instituted suit to enjoin? A. I recall none.

Q. And do you recall now, independently of the record in any suit,



when that assessment was attempted to be levied upon your interests or shares in the syndicate? A. I think it was in March, 1901.

Q. Now, as to the sales or attempted sales of these certificates of stock in the treasury of the syndicate; have you any personal knowledge of the trustees having made any effort to sell those shares or certificates for the purpose of realizing any money to pay the indebtedness of the syndicate? A. None whatever.

Q. You spoke about a sale or disposition of shares of interests that you had in the syndicate to Mr. Jenner. When did that sale or sales take place? A. In—I have the date exact if you wish, at present here with me.

Q. Can't you tell independently without refreshing your recollection? A. It was the first certificate which I received in November, 1892, and between that and January 1894, that is to say, during the years, chiefly of the year 1893, my transactions with Mr. Jenner must have taken place.

98 Q. Where they or not subsequent to the filing of the suit known as 16612? A. All prior to that.

Q. All prior to the filing of that suit? A. Yes, sir.

Q. And subsequent to the filing of that suit did you make any sale or disposition of your shares or interests in your shares to any one, by obtaining any money from any one on the strength of your interests or upon such shares in the syndicate? A. I recall none.

Q. Something has been asked you of your dealings with Baker respecting those shares. Were those dealings with Mr. Baker prior to or subsequent to the filing of the suit known as 16612? A. That suit was filed in July, 1895, and my dealings with C. A. Baker were previous to that date.

Q. The certificates of stock that you spoke of as having been used in payment of the Jenner trust and in payment of one other indebtedness of yours; to whom were those certificates delivered in payment of that indebtedness, I mean by yourself or by the trustees of the syndicate? A. Not by me, I judge by the trustees.

Q. I notice in the subscription list that you subscribed for thirteen shares or certificates of stock. I would like to know whether the certificates that went to pay the indebtedness that you referred to, were any part of the thirteen for which you subscribed? A. I had never identified them as being the same, as having any direct relation; if so, the book-keeping is at fault in that matter, so

99 far as I have seen any statement.

Q. You testified in chief, as I recall it, that you did not receive thirteen certificates? A. Only eleven at most, and even that number it seems a doubt in my mind; but at times it has been shown to me that that number were given me.

Q. What became of the two certificates then, that is the difference between eleven and thirteen? A. Our original agreement of May 2nd, I think provides that up to fourteen shares I was at liberty to subscribe and if the encumbrances showed that I had been overpaid when the other conditions were complied with, that I should

return sufficient to reimburse the syndicate, so as not to overdraw my amount and they were very anxious, when they had delivered me three certificates, lest I should overdraw, and that apprehension sufficiently shows why no more were given. They wanted to be sure there would be no complications.

Mr. LEIGHTON: I object to so much of the testimony that states the contents of the agreement of May 2nd, and also so much of the reply that states the witness' impressions of the defendants.

Q. Now, in answer to the question of counsel for the defendants, you spoke of the sum of \$1600 as having been blown in to protect this property. What did you mean by that? A. As I stated yesterday, rumors about the streets warned me that trouble was ahead. I watched the advertisements; and in the Star of November first, I

100 first saw that advertisement of this property; I at once sought legal advice and set about protecting the property. Acting on such advice for the best interests of the syndicate—I was not acting for myself, and knew full well that I could not act and wrong any member of the syndicate—I therefore went ahead and at almost any cost secured the money to meet and protect it,—save that property to myself and the syndicate.

Q. Well, what did you do in that direction, and how did you blow in, as you express it, this \$1600 for such purpose? A. I had business relations and connection with parties in New York and one or two other points, and made a negotiation which gave me the \$1,000 deposit on the first sale.

Q. When was the first sale? A. On November 13th, 1897.

Q. With whom was the deposit of \$1,000 made? A. With the auctioneer, C. C. Duncanson.

Q. And that deposit was made upon a bid of how much? A. I am not absolutely positive this moment; I should say, \$21,000, if it was not \$25,000.

Q. What became of the \$1,000 and what became of the bid made by you at that time; or in other words, I mean was the purchase completed or what was done about it?

Mr. LEIGHTON: Question objected to as it is not proper re-direct it has been gone over in the examination in chief of this witness and is not responsive to anything brought out in cross-examination.

A. Two weeks was given to complete the conditions of sale and at that time, having been disappointed in obtaining the amount  
101 necessary to carry it out, I communicated with the trustees and various parties in interest and an extension of time was granted—possibly ten days or two weeks—on the condition that I should deposit another \$300 to cover expenses.

Mr. LEIGHTON: Answer objected to and we move to strike it out.

Q. Did you do that? A. I did that, and did it a second time.

Q. What disposition was made of the \$600? A. I suppose the auctioneer's statement would show.

Q. Was that thousand dollars or \$600.00 ever returned to you.  
A. Never.

Mr. LEIGHTON: Question objected to for the reasons above stated.

Q. Now, questions were also asked you on cross-examination, about the sale at which the property was sought to have been bought in by Mr. Jenner, I believe you testified that a representative of yours bid upon the property at that sale? A. He did.

Q. What was the highest amount bid by him for that property at that time?

Mr. LEIGHTON: Question objected to as not proper re-direct examination.

A. \$24,100 is my recollection.

Q. Was that the highest bid made by any one at that sale at that time, that you recollect? A. I remember 24,100 or 24,200; that surely was the highest bid, and next to the highest bid was  
102 by Herbert W. T. Jenner, which was \$25.00 less.

Q. Well, that bid of \$24,100, what was done about that—

Mr. LEIGHTON: Question objected to as not proper re-direct examination.

Q. Or in other words, did you or your representative make the deposit required or did you make any effort to do so? A. There was \$1,000 deposit required to substantiate the bid; having failed as I said, in getting the cash, I took a bond, a \$1,000 bond—six per cent. interest bearing bond, for which I had paid \$1,000, and had my representative tender that; it was not a listed security and was not accepted.

Mr. LEIGHTON: Answer objected to and I move to strike it out as not proper re-direct examination; all this has been gone into in cross-examination.

Q. Then after refusal to take your \$1,000 bond as security, was the property knocked down to Mr. Jenner for the next highest bid?  
A. I supposed that it would be, but it was not.

Q. First, what was done with that property at that sale, if anything, after they refused to take your deposit? A. They dropped down to—I forget; I think it was \$17,000; my reason for thinking that, was, that the representative of the Hubbard blanket interest was there and notified me and others all around that he would bid, if necessary, in that amount to protect his clients' interests and this  
is what assisted my memory in the matter; it was just one  
103 bid over that, a bid of \$17,000, which seems to have been accepted instead of the \$24,000 bid by Mr. Jenner.

Q. But I understand from your testimony that the bidding was commenced all over again? A. It was. I cannot get it any clearer

in my mind than the fact that \$17,000 was bid there; I think—I do not feel positive on this point; probably yesterday I was thinking of the other matter at that time, but \$17,000 probably called for bids made, instead of taking the bid which had been made by Jenner of \$24,000.

Q. Now, subsequent to the refusal of the trustees or the auctioneer to receive what you tendered as a deposit; what, if anything, did Mr. Jenner or his representative do; or in other words, I want to direct your attention to whether or not it was a fact that subsequent to the refusal to take your deposit there was any conversation or consultation between Jenner and his representative, and his representative and the auctioneer and the trustees, Croissant and Johnson either?

Mr. LEIGHTON: That is objected to as immaterial.

A. There was had between them consultations both at the first sale of November 13th; they took a rest and had one, two or three consultations the first time, and the second time they had a conference of probably a few minutes before they began again with the bidding.

Yesterday I said that there were no bidders but Mr. Jenner representing certain interests and the representative of Starkweather, that I think should be amended by saying, possibly Mr. Wright representing the blanket trust or Hubbard interests, was there ready to bid and possibly did put in a bid one time.

By Mr. EVANS:

Q. It was brought out on cross-examination Mr. Starkweather, that Mr. Johnson and Mr. Jenner went on to New York to see the representative of the Hubbard estate, but you did not state your means of knowledge. How did you know that to be a fact? A. That Croissant, Johnson and Jenner respectively went not to New York but to Hartford, Connecticut, to see the various representatives of the Hubbard estate, the widow, the attorneys, banker, &c.; I learned that from the individuals themselves and Mr. Jenner. I did not learn—I had confirmation of this fact in Hartford, and it surprised me greatly; regarding Mr. Jenner, I asked him and he flushed and admitted that he had been there.

Q. You said up to the time of that visit your relations with the Hubbards had been of the kindest and pleasantest character? A. Pleasantest in the world.

Mr. LEIGHTON: I move to strike the latter part out, it was gone into on the direct examination; it is immaterial and irrelevant.

Q. It was also brought out by Mr. Leighton that at the time of this second sale you had interested your New York friends to save the property and that this was wholly due to the changed relation with the Hubbard people. Will you explain what you mean by that? A. By resources and relations. I was so crippled from the

time I brought that original suit, 16,612 in 1895, and these  
 105 trustees Croissant and Johnson declared that if I ventured to  
 institute suit they would ruin me; my resources I found were  
 crippled here; I could get no accommodation,—nothing; and after  
 their visits up there I found that they would not deal with me, nor  
 listen to me nor see documents that I presented to them; for ex-  
 ample, John D. Croissant told me that when he went up there Mr.  
 Buck wanted to know how much he was going to buy this ten acre  
 property for,—how much he was going to get for it; Mr. Croissant  
 told me that he told him that they expected to pay \$10,000 for it.  
 When I found out—saw that none of them would answer a letter,  
 and knowing that Croissant had so informed them up there, I took  
 the documents in the cause up there and showed them to those very  
 people. They did not care whatever I said or whatever the docu-  
 ments showed, they would believe nothing I said. It was not until  
 Wright came into the case, months—years later that their eyes were  
 opened to the fact, and they were perfectly appalled that a piece of  
 that property had been sold for \$75,000, as I had told them.

Mr. LEIGHTON: This answer is objected to so far as it states con-  
 clusions of the witness and in so far as it is hearsay.

Q. What were your relations with the Hubbards previous to this  
 visit of Johnson, Croissant and Jenner?

Mr. LEIGHTON: Objected to as immaterial.

A. No family relation could be pleasanter than those that existed  
 there; everything in the world that they had was at my disposal,  
 and everything that I had was at theirs. There were no business re-  
 lations, properly speaking, but there was only friendship and I was  
 throwing my money to him and he to me,—that was the re-  
 106 lation between Hubbard and myself.

Q. Well, if there was no business relation between you, Mr.  
 Starkweather, how do you account for the trust on that property, the  
 blanket trust?

Mr. DONALDSON: I object to that because he has already stated  
 very fully how he came to give that.

A. It was a voluntary act of mine, so that in any event he might  
 not suffer loss; it was the best I could do to protect him.

Q. What had you gained by the voluntary action of yours? A.  
 My friend, Mr. Hubbard had handed me money to the extent of  
 \$15,000. I feared that a judgment would be entered against me or  
 an attempt to enter legal proceedings; I preferred to suffer loss my-  
 self, and therefore without his knowledge put a blanket trust, named  
 the trustee on every piece of property that any of his money had  
 gone into and apprised him of the fact; which shows that our pre-  
 vious business matters had not been on a business basis, but on the  
 basis of friendship. When he was informed of it, he instructed the  
 trustee to release everything, leave the thing in my name and re-

lease everything as I might direct, and they would have done it without the knowledge of his death, had I not informed them: that incidentally was what brought a red flag on to any property of mine, the death of my friend, and the failure of the adviser of that estate to act in any way for a long term of years: I continued borrowing to protect the interests—semi-annual interest taxes &c.

Q. Mr. Leighton asked you upon cross-examination whether  
107 you have ever offered to pay Mr. Jenner your proportionate share and become interested in his purchase of the syndicate property of the trust sale? Were you ever notified to participate in any? A. Following that declaration of the trustees, that they would ruin me, they caused the whole list of subscribers there to avoid me with the exception of C. A. Baker, who had dealings with me; but they would take no notice of me on the streets or anywhere; and I could not with self-respect approach them, and I knew I would not receive a moment's consideration.

Q. The question I assume could be directly upon the matter here, to be upon the cross-examination, whether Mr. Jenner ever asked you to come in and participate in the payment of the purchase money—among the few of you? A. He never did. I have no knowledge that he has seen me since the day of that sale; he does not appear to have seen me.

#### Recross-examination.

By Mr. LEIGHTON:

Q. Mr. Starkweather what was this security that you wanted the trustees to take as a deposit? A. It was one of my own certificates of the Forest Lake cemetery in Prince George's county, Maryland.

Q. It was not a listed stock and had no market value? A. It was new, and too young to be properly listed, and yet it was a kind of security that Chauncey M. Depew and men of that character in New York are very glad to get hold of.

Mr. LEIGHTON: The answer is objected to as not responsive to my interrogatory.

108 A. (Continuing:) As I said before, it was not a listed stock but I paid \$1,000 for it cash.

Q. It had no market value? A. It had a market value.

Q. Could you get into the market and sell it? A. Wherever it was known, for instance in New York; that will give you an idea where I obtained the money I put in.

Q. You mean to say this stock of the cemetery in Prince George's county was salable in New York? A. Near \$100,000 of it has been sold there. I have sold all these very interests within a few months, and I can show you \$27,500 worth that I am under obligation to deliver still.

Q. Had any of it been sold in New York at the time you offered it to these trustees? A. It certainly had.

Q. They declined to take it. You don't recollect the property

was, after it had been struck down to you—you don't know whether it was again recried or not? A. It was recried.

Q. And finally struck down to Jenner? A. It was struck down to Jenner.

Q. Did you bid at the second cry? A. I had nothing to sustain my bid the next time.

Q. There was a bid by the holders of the blanket trust, a representative of the Hubbard estate? A. Possibly there was; it was well known to all there that he would not see it go below \$17,000.

Q. The shares of stock that you received and were to receive, was regarded as part of the \$75,000 purchase money, wasn't it? A. Yes, sir.

Q. At their face value? A. Yes, sir.

Q. At the time you transferred the title of this property to the trustees, had the title been examined and reported upon?

Mr. FORREST: That is objected to as not recross examination, certainly.

A. It had.

Q. The trustees knew at the time of the purchase of the condition of the title of the property, of any encumbrances upon it? A. They certainly did, I paid for it; a certificate was obtained from the Washington Title Company but it was said that some of the other syndicate subscribers preferred a Columbia title, and a full certificate of title was obtained from the Columbia Title Company.

Q. Why, whatever was the trustees agreement to deliver to you your full quota of shares of stock or certificates, there was no trouble about the title?

Mr. FORREST: Same objection to that question and all this line of inquiry, as not proper re-cross examination.

A. I suppose it was some reason that I have no positive knowledge of, it is only an inference of mine that they did not, though they thought they could juggle me out of it as they had increased twice \$5,000 entry they made it appear a \$10,000 entry, as it was shaped out for that 16,612 case; entries were made double by J. D. Croissant, and he confessed it to John C. Fay.

110 Mr. LEIGHTON: Answer is objected to and I move to strike it out.

Q. Where did Mr. Johnson say to you that he had been to Connecticut to visit the Hubbards? A. My recollection is that it was where this whole transaction, original transaction, occurred. I think it was 611 Eleventh street, where J. D. Croissant's office was and 617 F street, where J. O. Johnson's office was at that time.

Q. When? A. In 1892.

Q. Did he make that statement to you more than once? A. I am not sure that he did more than once; Croissant certainly did.

Q. Who were present at the time Mr. Johnson stated to you that

he had been to Connecticut to see the Hubbards? A. I do not know positively; I should say Dr. Green of Ansonia, who was frequently in there. In regard to the value of those certificates the Harrison Granite Company of New York State, which is represented at about \$100,000 took \$17,000 worth of them in lieu of cash, to carry out and erect a structure on Forest Lake cemetery 25,000 of certain Forest Lake Cemetery shares which were deposited here in the National Bank of the Republic and afterwards transferred to a trust company on the dissolution of that bank, which immediately accepted this, as showing the validity of those securities.

111 Mr. LEIGHTON: This voluntary statement on the part of the witness is objected to as not responsive to anything asked him, and I move to strike it out from the record.

By Mr. DONALDSON:

Q. Mr. Starkweather you remember the date of this sale about which you have just been talking? A. Yes; February 3rd, 1898.

Q. How much notice did you have of it? A. I had all the notice there was, as I remember, it may have been ten days.

Q. The advertisement ran for ten days? A. As I remember.

Q. You knew that these certificates about which you have just been talking were not known down here, did you not? A. Yes, sir.

Q. You had ample time to go to such market with them in those days and turn them into cash? A. Yes, sir.

Q. You did not do it? A. I did.

Q. When? A. I did in November—the latter part of my answer as to the negotiability of these securities was erroneous. I was in New York making a sacrifice on January 30th, when I received a telegram from one who was acting for me here and thereupon I returned.

Q. All that was subsequent to the sale? A. All previous, it was two or three days previous to the sale.

112 Q. You said afterwards you went to New York and did certain things? A. I went two, three or four times, anxious to raise enough money—

Q. For the purpose of engaging the assistance of others? A. And I paid two dollars for one.

Q. How long after the first sale did the second sale take place?

A. The days from November 13, 1897 to February 3, 1898.

Q. So that you did know on the second sale in February that the certificate for \$1,000 that you brought the trustees was not marketable? A. I knew the intrinsic value, but I knew they were not readily negotiable among those uninformed of the conditions of the property.

Q. And you also knew that you had been to New York in an unsuccessful effort to realize money on it?

Mr. FORREST: That is objected to, as not what I understand the witness to have testified to.



A. I did the first time. I would have succeeded, I have no doubt, but for the unfortunate telegram bringing me here, and there was not time to go and renew my negotiations there.

Q. When did you file this suit, 16,612? A. In July, 1895.

Q. And what was the date of these two sales? A. One on November 13th, 1897 and the other February 3, 1898.

113 Q. Your relations with all the other members of the syndicate had, in the meantime, become somewhat strained?

A. A great deal.

Q. With whom did you confer,—with anybody about your intention to become a bidder at these sales? A. With my attorney, at his instructions; with my representative, and one or two or three others, possibly.

Q. Any members of the syndicate? A. No, sir; I was not on speaking terms with them.

Q. What did you mean, when you said in your cross-examination, that you were going to bid it in for the benefit of the syndicate?

A. My attorney said, "Your way to do is to bid that in through a third party that you can trust, then you will hold a whip hand over them and not be dictated to as you have been heretofore." I knew distinctly that I could not do anything but justice; I knew a court in equity would force me to treat with equality each member of that syndicate.

Mr. DONALDSON: So much of the answer as is not responsive to the question will be stricken out.

Q. So that you did not say anything to the other members of the syndicate about your becoming a bidder at that time? A. Well, after that I could not; I learned from others who bore relation to it, that every member would be——

Mr. DONALDSON: That is also objected to.

114 Q. Your effort to obtain what you call "the whip hand" failed because you were unable to comply with the terms of these sales? A. My failure to do—carry out the plans suggested by my attorney as the only plan to pursue to protect the interests of all members of the syndicate failed, as I have been informed by the over-confidence of my attorney here, another attorney who had charge of that matter, Berryman, and the matter flagged on this.

Mr. DONALDSON: All of that answer is objected to because it is irresponsive to the question.

Re-redirect examination.

By Mr. FORREST:

Q. When you spoke about the advice of your attorney in securing this property, so as to give you the whip hand; let me ask you whether or not it was your intention in the event of your securing the property at this sale, to hold it for the benefit of the syndicate?

Mr. LEIGHTON : That is objected to.

A. It was.

Mr. LEIGHTON : That is objected to, the same not proper re-direct examination or in response to anything brought out by us, and you have already put the same interrogatory in your direct examination.

GEO. B. STARKWEATHER.

Subscribed and sworn to before me this 29th day of February, 1904.

JNO. E. McNALLY,  
*Examiner in Chancery.*

115 Whereupon, JOHN O. JOHNSON, a witness produced on behalf of the complainant, being duly sworn, was examined, and testified as follows :

Direct examination.

By Mr. FORREST :

Q. Mr. Johnson you are one of the defendants in this cause? A. I am the man referred to.

Q. I show you a paper purporting to be a subscription list to shares or interests in what is known as the Crescent Heights Syndicate; and ask you whether or not you identify the signatures of the different persons to this paper; as to the parties who signed their names thereto in your presence? A. (Witness looking at paper.) Yes, all of those subscribed in my presence. I know the signatures of all.

MR. FORREST : The solicitor for the complainant again offers in evidence the subscription list referred to.

Q. I notice that the defendant Herbert W. T. Jenner, subscribes for two shares or interest in the syndicate. To your knowledge, as one of the trustees, has he had an interest in the syndicate from the time of his subscription to date—to the present? A. They were issued to him.

Q. Do you know whether he has kept an interest or retained an interest from the time of the issuance of the certificates to this time?

A. Yes, so far as in my knowledge.

116 Q. When the certificate was transferred from the original party to whom issued, were you notified? A. I always made the transfer. The book of stubs will show.

Q. I show you a printed form of syndicate certificate as issued to George B. Starkweather and ask you whether or not that is the form of syndicate certificate that were used by you and your co-trustee in issuing certificates to the different subscribers, and is that the only form that was issued? A. That is the only form that was used.

Q. I notice that this certificate recites that the party to whom issued, has contributed \$2500 and the trustees acknowledged to have received \$2500. My question is whether or not upon the issuance of each one of these certificates, except in the case of Starkweather, \$2500 was actually paid to the trustees for each share? A. They were all paid for in instalments, as noted on the side here (referring to certificate), there is a memoranda showing Croissant's commission and mine; the other is paid one-half down. One of them paid all down; one paid a deposit which I returned because he did not finish his payments. Starkweather's were paid by equity in the grounds. Jenner paid for one in money and one in notes which were cancelled.

Q. Cancelled by payments you mean? A. Yes; that is, we issued the stock certificate for his note and cancelled the note and released the trust.

Q. That was a certificate issued in payment of the trust held by him for \$2500 against the property? A. Yes, sir.

117 Q. I notice that Croissant and yourself have subscribed each, to two shares. You said something about commissions?

A. Croissant got one share for his commission and paid for one, and I got one of mine for commission and one I paid for.

Q. And one Croissant paid for? A. Yes, sir. These two commissions were charged against Starkweather, of course.

Q. Do you know, independently of your stub book, and as a matter of fact how many of these thirteen shares were issued to Starkweather? A. I would have to look at the book for that, it is pretty old.

Q. These commissions that you referred to, represented by a share each to you and Croissant, can you state independently from your stub book whether they came out of the 13 shares? A. I could not tell that.

Q. I see by this subscription list that thirty shares of stock were subscribed to, including the thirteen shares mentioned here of Starkweather's, and I see by the pleadings in this cause and by your answer, that six of the thirty were retained in the Treasury? A. Yes, sir.

Q. How do you arrive at the retention of those, taken in view of the fact that this subscription list shows that thirty were subscribed for? A. When we got the certificate of title we found a trust known as the Hubbard trust for \$14,500 and we retained six shares, 118 making \$15,000 to cover that. Mr. Starkweather however, said that he could get that trust released and in that case the six shares would be issued to him.

Q. Then, do I understand from your explanation that the six shares that were retained in the treasury came from the thirteen shares to Starkweather? A. It would be from that. Now, I would say further, if we would sell it for cash and pay it to the Hubbards he would get thirteen less six, or if he released it he would get the thirteen shares.

Q. Now, independently of your books or records, could you say what payments were made by the trustees, out of the funds realized from the sale of these shares or certificates, to Starkweather or on his account in the liquidation of trusts or liens? A. The first payment we made to Ashford and Stickney, a matter of Blair Lee's, of six or seven thousand dollars; I frequently gave Mr. Starkweather some small sums, for which we have the old checks, and a ten thousand dollar payment.

Q. Could you furnish us with the statement, Mr. Johnson, showing as well as you can from your books, the amount actually received from the sale or disposition of these shares or interests in the syndicate, and the disbursements made on account thereof? A. If the auditor will hand over the book I delivered to him. I kept a separate book for the Crescent Heights in which no other memoranda appeared. There is also a balance sheet that was struck off by our attorney giving all the receipts and itemized expenditures.

That is in the hands of some of the attorneys in the multitudinous suits.

Q. In the absence of the production of this book and this memoranda that you referred to, or checks, is there any other source from which you could supply this data as to the cash received or disbursements made by the trustees? A. No, I would have to have those.

Q. You spoke about the amount paid to Blair Lee; was that known as the Armstrong matter, do you recall—the Armstrong trust? A. I am not familiar with that.

Q. Wasn't the sum paid on account thereof some \$2,500 instead of between six and seven thousand? A. It has been a long time, I don't recall the matter.

Q. Well, now, I showed you this subscription list and among the names appear those of E. S. Parker and Ellis Spear. So far as you are advised, as trustee, did they continue to be share holders or certificate holders in that syndicate from the time of their subscription to this time? A. Yes.

Q. I notice by a bill of proceeding filed in another of these causes that R. G. Campbell in his lifetime purported to be the owner or holder of certain shares or interests in this syndicate. Can you now recall when he became interested in it, if he did, that is, outside of your record? A. It was when I had my office on the main floor at 1117 G street, when he came in to have some certificates transferred from Starkweather to Campbell—at least six years or more ago.

120 Mr. LEIGHTON: We will call Mr. Johnson as our own witness and therefore waive cross examination at this time.

JOHN O. JOHNSON.

Subscribed and sworn to before me this 20th day of February, 1904.

JNO. E. McNALLY,

*Examiner in Chancery.*

The further taking of testimony was here adjourned until tomorrow, Wednesday, (February 10th, 1904) morning at 11 o'clock, at the same place.

JNO. E. McNALLY,  
*Examiner in Chancery.*

WEDNESDAY, *February 10, 1904*—11 o'clock a. m.

Met pursuant to adjournment, at the same place.

Present : Same parties as before.

Thereupon, FULTON R. GORDON, a witness of lawful age, produced on behalf of the complainant, being first duly sworn according to law was examined and testified as follows :

Direct examination.

By Mr. FOREST :

Q. Mr. Gordon, what is your business ? A. I am engaged in dealing in suburban real estate.

121 Q. How long have you been so engaged ? A. Well, I have been in the real estate business about twelve years ; the most of the time has been with suburban real estate.

Q. Do you mean suburban real estate in this city and District. A. Principally—most of the time, some outside.

Q. Do you know the location in this District of the property owned by the Crescent Heights syndicate, or a portion of it fronting near Spring street—fronting on 16th street, and consisting of about seven acres ? A. I know that piece of ground ; yes, sir.

Q. And are you familiar with the location of property in that neighborhood ? A. Yes, sir.

Q. Have you had any dealings with real estate in that vicinity ? A. Yes, sir,

Q. And have those dealings been within the past few years ? A. Yes, sir. I just completed a large sale there ?

Q. Now, what, in your opinion, is the value of the seven acres to which I have called your attention ; per acre ?

Mr. LEIGHTON I object to that as immaterial and irrelevant to any issue we have here.

Mr. DONALDSON : And upon the further ground that the property in question has not been specifically brought to the attention of the witness.

122 A. Well, in dealing in real estate, our company or myself either, would be willing to pay from five to six thousand dollars per acre for such ground to divide up in lots.

Mr. LEIGHTON : The answer is objected to as not indicating a market value, the only question here could be the fair market value of the property.

Q. That being the value of the property as you say for purpose of purchase, what in your opinion, would be the market value of that property—in other words, would there be any difference between the market value and the value you give? A. I consider that a very reasonable market value; we do not buy unless at a very reasonable price.

Q. Has there been in your judgment, any difference in the change of values in property in the neighborhood where this property is located—say, since 1898? A. Yes, sir; I would say there was a change.

Q. Has that change been in the tendency of an increase or decreased value? A. Increased.

Q. Were you familiar with the values of property in that neighborhood in 1898? A. Fairly well so, yes, sir.

Q. And did you know the location of this seven acre tract, to which I have called your attention, at that time? A. Yes, sir; I have been familiar with that section for some time.

Q. In February, 1898, what, in your opinion, was the value of the seven acre tract per acre?

123 Mr. LEIGHTON: That question is objected to as irrelevant and immaterial to any issue in question here.

A. Well, I would say from three to four thousand dollars per acre.

Q. I inquire also, what, in your opinion, was the value of this tract to which I have called your attention, in March and April, 1903? A. Well, I would say about the same as now; not much change from last year.

Cross-examination.

By Mr. LEIGHTON:

Q. Is your judgment based on any sales which have taken place, of property in the immediate vicinity of this? A. Yes, sir.

Q. Upon what? A. We handled a large subdivision near there.

Q. On 14th street? A. Right on the side of this property, to the east of it.

Q. Your property is on grade? A. Well, pretty near.

Q. And very near the level? A. No; some places they have probably ten feet.

Q. Do you know whether this seven acre tract will be on grade when 16th street is extended? A. It is very rolling.

Q. Is not the rest uneven? A. Yes, sir.

124 Q. Do you know the estimate of your value placed upon the theory that 16th street will go through it? A. Yes, sir.

Q. Except for that you would not place a higher value upon it? A. No.

Q. Suppose that when 16th street comes through it, rights assumed, and this grade to be as now indicated it will leave that property in a great hole, would it not, and most of it below grade?

A. I do not know how much comes down in the hollow, I could not say, but I consider that anything from 16th street very desirable.

Q. You do not know whether it is contemplated to bridge 14th street?

Mr. FORREST: That is objected to as immaterial.

Q. And 14th street road as it now lies there to lay a bridge near 16th, I understand it to grade up? A. I am not positive, I have heard that 16th street was to be bridged.

Q. Well, in either event, whether it is to be bridged or not, it will leave this property that you speak of below grade? A. It will leave some of it below grade.

Q. Won't it leave all of it? A. No, sir.

Q. As the seven acre tract now is, it does not front on any street?

A. It may touch on Spring road, or 14th street road; I am not positive of that.

125 Q. Well, the seven acres, as a matter of fact, does not face on Spring road? A. Really I thought so.

Q. The seven acre tract is immediately back of it; the three acre tract fronts on Spring road? A. Well, if it is back and on the plateau, it is more valuable.

Q. Is it not true that prior to the year 1898, prior to the definite extension of 16th street that there was a great stagnation in regard to all property along this section? A. Prior to 1898, there was everywhere.

Q. Now, do you know the Jamison tract that lies north of it? A. I am familiar with the general neighborhood.

Q. That is about ten or twelve acres? A. Yes, sir; I know that somewhat in a general way.

Q. How does that compare in value with the seven acre tract? A. I would rather have a map in regard to that; I do not know just how the street lays.

Q. Sixteenth street runs through it, as this? A. That is 14th street.

Q. It is west of it? A. I would rather have a map to get myself located first.

Q. Can you state relatively the value of that ground to this? A. That is on the north.

126 Q. Sixteenth street runs through it, you say? A. Yes, sir; why, yes, it will be all about equal value unless it runs to quite a hollow back over to the right, some of it might avoid it; if it runs as well as this, I would say about equal.

Mr. FORREST: Answer is objected to as showing that the witness has not a sufficient knowledge as to the lay of the tract upon which to form his opinion.

Q. Do you know of any sales taking place in that vicinity in 1898 or 1897? A. No, sir.

Q. Then your estimate of values is not based upon any actual

sales taking place in that vicinity? A. Upon my general knowledge, and what I know of that locality now.

Q. The commission who awarded damages to Hendershot of the property taken for 16th street, awarded him \$2,000 per acre in 1901. Would you consider that an excessive value?

Mr. FORREST: The question is objected to as in the first place, in assuming something of which there is no proof and in the next place, because the matter is immaterial and irrelevant, there having been formed no bases for such valuation to be put upon the property by the witness; and further because it is not shown what part of the property referred to has been taken, nor does it appear that the property referred to has as this property, a frontage on the public road, to wit: 14th street.

A. Well, I would have to answer that with a little explanation. The way I understand the jury of condemnation, when they  
127 make these awards, they have to take the net gain or benefits, and they make it accordingly; and their decision there is different from the opinion I am giving now; I am giving opinion as to the value of the ground per acre.

Q. They allow no benefits as derived in this case, it was a commission appointed by the court?

Mr. FORREST: The form of the question is objected to because there is nothing in the cause upon which to form the question.

Q. You regard the value as low or high? A. I would regard it as very low.

Q. How much did you pay for the property that you bought near Columbia Heights? A. We paid about \$3200 and a fraction per acre.

Q. When did you buy it? A. I would say about 1901, that extended from 14th street to Brightwood avenue, but that was not considered near as valuable as this.

Q. Was that the average price that you paid for the property?  
A. We paid for the whole of it?

Q. Yes. How many acres? A. Twenty-five acres.

Redirect examination.

By Mr. FORREST:

Q. What, if any difference would it make in the value of this seven acre tract that I have called to your attention, if it had a frontage on Spring street?

Mr. LEIGHTON: I object to that as hypothetical and immaterial.

128 A. Well, I think if it is up on the plateau, it will help it,—on Spring street, I do not know.

Q. In the answers that you gave to the questions that I put to you as to the value, did you take into consideration the fact that this



seven acre property had a frontage on 14th street? A. I understand, yes, sir.

Q. Now in taking into consideration estimates of the value of this property, did you or not take into consideration the closer proximity of the property to railroad facilities? A. Yes, sir. I have taken all these into consideration.

Recross-examination.

By Mr. LEIGHTON:

Q. Have you seen the plans or do you know the grade at which this seven acre tract will be left when 16th street goes through it? A. Not, except what I would judge from walking over the ground; I have not seen the official plans.

Q. Do you know how high the bridge will be? A. No; except from looking at it from the grade, I would have to guess. They have graded 16th street pretty near up to Spring road.

Q. How high should you estimate it?

Mr. FORREST: That is objected to.

A. I would say thirty feet. From Spring road to the bridge is, say thirty feet.

FULTON R. GORDON.

Subscribed and sworn to before me this 29th day of February, 1904.

JNO. E. McNALLY,  
*Examiner in Chancery.*

129 Whereupon, GEORGE B. STARKWEATHER, a witness heretofore produced and sworn, was recalled and testified as follows:

Redirect examination.

By Mr. FORREST:

Q. Mr. Starkweather, there was one question that I omitted to ask you in chief, that I desire to recall you for the purpose of putting the inquiry to you and that is this,—whether in the contract or agreement between you and the persons composing this syndicate, or in your dealings with them it was ever stated or whatever the contemplation of any of your contracts or agreements, that you were not liable to any assessments upon the shares or certificates held by you in the syndicate property?

Mr. LEIGHTON: That is objected to as immaterial and not relevant to the issues we have here, and further the contracts themselves are the best evidence, as to what the obligations were.

A. It was never suggested that I was to be liable to any indebtedness or encumbrances on that property; the date of the transaction

of May 2nd, 1892, but on the contrary, it was frequently talked over and discussed, that I would be free from all of those; no suggestion was made to me of assessments up to the date of the sale of February 3rd, 1898.

Q. Did you, from your contracts and agreements with those parties, understand that you were liable to assessments for the debts, to pay the debts of the syndicate or the encumbrances existing upon the property?

130 Mr. LEIGHTON: That is objected to for the reason above stated to the last interrogatory.

A. I did not. I wish to add to one question Mr. Donaldson put to me yesterday, he questioned me as to the non-negotiability of these securities over there; I failed to state why, what had impaired the marketability of the security which in no way affected its intrinsic value: in February, 1897 I contracted with the granite company for a \$42,000 receiving vault to be completed by September, when less than half completed in June, 1897, for reasons of their own unknown to me, they suspended work; hence, in November, 1897, those securities were difficult of negotiation, although the two hundred acres of realty, upon which they rested, were in no way jeopardized by them.

Mr. LEIGHTON: This statement of the witness is objected to and I move to strike it out as being immaterial and irrelevant, and not responsive to any question put to him on cross-examination.

GEO. B. STARKWEATHER.

Subscribed and sworn to before me this 29 day of February, 1904.

JNO. E. McNALLY,  
*Examiner in Chancery.*

Whereupon, JOHN C. DAVIDSON, a witness of lawful age, produced on behalf of the complainant, being first duly sworn according to law, was examined and testified as follows:

131 Direct examination.

By Mr. FORREST:

Q. Mr. Davidson, what business are you engaged in? A. In the real estate business; of the firm of Davidson and Davidson.

Q. How long have you been so engaged in the real estate business? A. Since 1884.

Q. Did you know Thomas H. Gaither of Baltimore? A. He was a second cousin of mine; yes, sir.

Q. And in your real estate business, did you have any transactions with him; in the way of loaning or investing money? A. I had a great many. Loaning money, and bought and sold a great deal of property for him in this city and District.

Q. Do you recall whether you had any connection with a loan that was made by him on some property in this District owned or controlled by George B. Starkweather? A. Only in collecting the interest on the note.

Q. Do you recall where that property was located? A. It was on Spring street—on 14th street extended; in the neighborhood of Piney branch.

Q. In the county of Washington? A. Yes, sir.

Q. Do you now recall the amount of that loan? A. I think (looking on a note—mem.)—\$7553.34.

132 Q. Has that loan been satisfied? A. Paid—yes, sir.

Q. And if you know, how was it paid; I mean by somebody taking up the note or by sale of the property, or how? A. By auction sale, I think.

Q. Were you at the time of the sale, still the agent of Mr. Gaither in this matter, or your firm? A. We were collecting the interest on the note.

Q. Can you say from your books or from your recollection, down to what time prior to the sale the interest had been collected? A. My recollection was, up to July 29, 1898, I think, or 1899.

Q. Well, say, whether or no it refreshes your recollection; it appears from the evidence in this case, which is in substance, that the sale took place on February 3, 1898. Now, in view of that date what do you say, [the interest was paid? A. Only paid to—the previous July the interest was in default; that was in July, 1897.

Q. And was the interest according to your recollection, payable annually or semi annually? A. Semi-annually.

Q. In connection with proceedings for the sale of this property to satisfy this debt, did you meet either one of the persons named as defendants here; that is, Herbert W. T. Jenner, John D. Croissant or John O. Johnson? A. I saw Mr. Johnson very frequently and Mr. Jenner a few times in regard to that, both in my office and on the street.

133 Q. Now, if you can recall, did the owner or holder of this note, Mr. Gaither, desire the collection of the principal of the note? A. I do not know that he ever demanded the principal. The note was repeatedly extended by us for some two or three times, I think, at the time of payment of interest.

Q. And for whom was the note extended, do you recall? A. I could not say whether for Mr. Starkweather or for Mr. Johnson; I know it was extended for Mr. Starkweather once, but after that I do not remember.

Q. Now, did you have any connection with the advertisement of this property for sale under that deed of trust, in the way of naming the deposit to be paid at the time of sale?

MR. LEIGHTON: I object to that as immaterial; the trustees are the proper persons to determine that.

A. I do not think Mr. Gaither or ourselves ever requested any sum or amount of deposit to be required at the sale.

Q. Well in connection with the matter of deposit; did you have any conversation with Jenner, Johnson or Creissant? A. I have no recollection.

Q. Prior to the sale of this property or alleged sale of this property, had you any conversation either with Croissant, Johnson or Jenner about this sale, or any desire on their part in connection therewith? A. We repeatedly threatened sale for non-payment of interest and my recollection is that they paid interest several  
134 times and then refused *on* saying that they could not collect from some of the syndicate owners their share of the interest, and they would not pay it themselves; and said they had already put up a good deal of money on that account and would not put up any more, and that we could sell it so far as they were concerned.

Q. Who was that conversation with? A. Mr. Johnson principally, and I think Mr. Jenner, I think they were both in the office at one time—at the time we were threatening to sell.

Q. Do you recall whether or no there was one or two attempts to sell this property before it was finally knocked down to Mr. Jenner? A. Yes; two deposits were made to us by the trustees, I think, for \$300 each, my recollection is to postpone it;—deposits made by Mr. Starkweather to postpone the sale.

Q. Do you remember also of his having made a deposit of \$1,000? A. At the time of the sale.

Q. Do you know what became of these three deposits? A. I know one of them was transmitted by us to Mr. Gaither and was endorsed on the note. I think the other was the same; just before I came here I saw a memoranda where it had been endorsed on the note and sent to Mr. Gaither. The other, I think was endorsed by the trustee Mr. Duvall and either held by him or sent direct to Mr. Gaither, I do not know which—I think held by him until the sale was settled up.

Q. The note that was secured by this deed of trust—do you  
135 now recall who the maker was? A. George Starkweather.

Cross-examination.

By Mr. LEIGHTON:

Q. I understand the principal of this note was overdue at the time of this sale? A. I think not; the principal was overdue, but it had been extended by us on the back of the note, and was not overdue at the time of the sale.

Mr. FORREST: The solicitor for the complainant calls for the production of that note from the defendants herein, especially with endorsements of the defendants Cole or Duval, and in its absence will insist upon this secondary evidence as to the endorsements or contents thereof.

Q. As I understand it in your evidence the interest to July was overdue? A. My recollection is that.

Q. And that would make another instalment due in January that was not paid? A. Yes—in the meantime there had been these deposits of some two or three, I think, deposits of Mr. Starkweather; although they would not apply really to the interest, if it had been on that account.

Q. They were paid for the purpose of postponing the sale? A. Yes, sir.

Q. And they were not credited against the interest? A. I do not know how they were credited on the note; they were credited on the note but I do not suppose that ever reduced the interest, only to cover the expenses of the sale.

Q. The expense paid, so that your client was not willing the loan should remain there unless the interest was paid? A. Yes, sir.

Q. That was the only condition upon which he would continue the loan? A. Yes, sir.

Redirect examination.

By Mr. FORREST:

Q. In this conversation with the defendants, or either of them, did they mention the name of Mr. Starkweather? A. My recollection is that they mentioned Mr. Starkweather being the delinquent share holder; they could not collect his share of interest.

JOHN C. DAVIDSON.

Subscribed and sworn to before me this 29 day of February, 1904.

JNO. E. McNALLY,  
*Examiner in Chancery.*

The solicitors for the complainant announce the testimony in chief in this case as closed.

JNO. E. McNALLY,  
*Examiner in Chancery.*

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EXHIBIT No. 1.

Liber 1193, Folio 272 *et seq.* S. J. F.

Filed June 29, 1904.

Virginia C. Lewis	}	Deed. Recorded July 17, 1886, 12:30 p. m.
to		
George B. Starkweather.	}	

This indenture, made this seventeenth day of July, in the year of our Lord one thousand eight hundred and eighty-six, by and between Virginia C. Lewis of the city of Washington, and District of

Columbia, party of the first part, and George B. Starkweather of the county of Washington, and District of Columbia, party of the second part. *Witnesseth*, That the said party of the first part, for and in consideration of the sum of five dollars in lawful money of the United States to her in hand, paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained sold, aliened, enfeoffed, released and conveyed, and doth by these presents grant, bargain, sell, alien, enfeoff release and convey unto the said party of the second part, his heirs and assigns forever, the following described real estate, situate in the county of Washington, District of Columbia, to wit: All of those certain pieces or parcels of land and premises known and distinguished as and being, part of the Padsworth, and of the Pleasant Plains tracts, beginning at a large stone to the north of Piney Branch bridge, on the 14th. St. road, which stone is also the beginning of the first line of Argyle &c. thence N.  $61\frac{1}{2}$  deg. E. 198 ft. along the line of the York estate, thence N. 54 deg. E. 359 ft. along said line to the N. E. corner of the herein described tract, thence S.  $52\frac{1}{2}$  deg. E. 290 40/100 ft. to a stone, thence S.  $33\frac{1}{2}$  deg. E. 300 30/100 ft. to an oak tree, thence S.  $18\frac{3}{4}$  deg. E. 174 90/100 ft. to what was the N. W. corner stone of Wm. Holmead's boundary, thence N.  $66\frac{1}{4}$  deg. W. 36 50/100 ft. thence N. 89 deg. W. 255 ft. thence S. 84 deg. W. 227 75/100 ft. thence S.  $80\frac{1}{4}$  deg. W. 181 50/100 ft. to a stone, thence N. 19 deg. W. 263 ft. along the Capt. Hall line to a stone, thence S. 63 deg. W. with the Hall line along a wagon road, 113 ft. thence S. 15 deg. W. 56 ft. to the E. side of the 14th. St. road, thence N. 28 deg. W. with said road 205 ft. to a point beyond the Piney Branch bridge, thence N.  $76\frac{1}{2}$  deg. E. 79 20/100 ft. to the place of beginning, including all the real estate lying within these lines except lot 3 already owned by the party of the second part, and recorded in Liber No. 1172, fol. 398 *et seq.* which embraces the lots covered by deeds recorded in Liber 899 fol. 30, Lib. 981 fol. 66 *et seq.* Liber 1166 fol. 485 *et seq.* and Lib. 1166 fol. 487 *et seq.* Also that piece of land adjoining known as lot 1 of the Holmead tract bordering on the N. and W. line of Spring St. and lying adjacent to the S. and E. lines of the Lewis land and S. of the land of W. J. Rhee which was transferred from Wm. Holmead to V. C. Lewis, and recorded July 14th, 1886, the five parts or parcels of land herein described containing 6 74/100 acres more or less, as gathered and determined by the surveys and plats of Deming in 1870, N. Dubois in 1875, and of B. D. Carpenter in 1881 and 1882, and also by the several deeds herein referred to. Together with all the improvements, ways, easements, rights, privileges appurtenances and hereditaments to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues and profits thereof and all the estate, right, title interest, claim and demand whatsoever, either at law or in equity of the said party of the first part, of, in, to or out of the said pieces or parcels of land and premises. *To have and to hold* the said pieces or parcels of

land and premises with the appurtenances unto the said party of the second part, his heirs and assigns, to his and their sole use, benefit and behoof forever. And the said party of the first part, for herself, and for her heirs, executors and administrators doth hereby covenant, promise and agree to and with the said party of the second part his heirs and assigns, that she, the said party of the first part and her heirs shall and will warrant and forever defend the said pieces or parcels of land and premises and appurtenances unto the said party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same or any part thereof, by, from, under or through her, them or any of them. *And further*, that she, the said party of the first part and her heirs shall and will at any and at all times hereafter upon the request and at the cost of the said party of the second part his heirs or assigns, make, execute, deliver and acknowledge all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said pieces or parcels of land and premises and appurtenances unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns, or their counsel learned in law shall advise, devise, or require.

*In testimony whereof*, the said party of the first part hath hereunto set her hand and seal on the day and year first hereinbefore written.

VIRGINIA C. LEWIS. [SEAL.]

Signed, sealed and delivered in the presence of:—

F. H. STICKNEY,  
MORTIMER CLARKE.

140 CITY OF WASHINGTON, )  
District of Columbia, ) 88 /

I, Ewell A. Dick, a notary public in and for the District aforesaid, do hereby certify that Virginia C. Lewis, party to a certain deed bearing date on the seventeenth day of July, A. D. 1886 and hereunto annexed, personally appeared before me in the District aforesaid, the said Virginia C. Lewis being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed; and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

*Given under my hand and notarial seal this seventeenth day of July, A. D. 1886.*

EDWELL A. DICK,  
*Notary Public.*

[NOTARIAL SEAL.]

## DISTRICT OF COLUMBIA:

OFFICE OF THE RECORDER OF DEEDS, Oct. 20, 1904.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 1193, fol. 272, *et seq.* one of the land records of the District of Columbia.

R. W. DUTTON,

[SEAL.]

*Deputy Recorder of Deeds, Dist. of Col.*

## 111 EXHIBIT No. 2

Memo. of agr't ent'r'd into this 30th day of Apr. 1892 by and between G. B. S. of 1st & J. D. C. & J. O. J. of 2nd part all of D. C. witnesseth:

Whereas, St. is owned of some 400,000 ft. of property at 14th and Spring St. Mt. P. and [sorely pressed for funds]\*, and whereas said Cr. & Jo. as real estate operators are desirous of forming a syndicate

Spring St.

to purchase this property including the A frontage not yet controlled by me said St. it is therefore agreed:

1st. That [not later than]\* said St. shall deliver this property to a synd. for \$75,000, with s'd Cr. & Jo. as trustees thereof with powers to act in the usual way [subject to will of majority interest.]\*

2nd. That the interests of s'd synd. shall be represented by 15

certificates [shares]\* of \$6000, each said trustees being entitled to one of said certificates for their services in connection with the formation of s'd synd.

3rd. That s'd St. agrees to deliver the colored holdings on Spring St. for the price indicated [the]\* reserving however as his own the improvements in the shape of buildings on the entire property [ay]\* For any holding not controlled by either of the parties hereto—by June 1st an amount equal to double the purchase price per foot of the tract shall be held back for said purchase and control.

4th. Said St. shall have the privilege of reserving or [pante]\* purchasing seven of the fifteen certificates or shares in consideration of the low a price

5th. As to the personnel of the synd. s'd St. reserves the right of one challenge in case a *person non grata* should appear as a

112 share holder

6th. That the strictest secrecy be observed regarding the existence of this instrument and project till May 10th [in view]\* for prudential reasons

7th. That not later than Monday May 2nd s'd St. shall receive in cash \$5500 towards the purchase price and for the furtherance of

[\* Words enclosed in brackets erased in copy.]



the project herein contemplated, and a deed to the 70000 or more feet shall be [made]<sup>given</sup>\* at the same time by s'd St. & wife to s'd trustees [but which sh]\* the Blair Lee interest being paid out of said \$5500 but the deed to be withheld from record for prudential reasons till May 10th

8th. Deed to rest of property to be delivered as soon as one half this purchase price is paid less the holdings of the S—— and the 5,000 com

8 Payments to be  $\frac{1}{2}$  cash balance within <sup>5</sup> [or ten]\* yrs. interest 5 per cent. payable annually.

9th. [Cash shall be]\*

#### EXHIBIT No. 3.

John O. Johnson, R. B. B. Chew, Jr., Att'y. at Law.

Johnson, Chew & Co., Law, Real Estate, Loans & Insurance, 617 F Street N. W., Washington, D. C.

APRIL 30TH, 1892.

Blair Lee, Esq.

DEAR SIR: We called at your office this p. m., to say that 143 we have arranged to purchase of G. B. Starkweather his tract at the head of 14th St. extended, on which we are to pay him \$1000, on Monday, and more very soon thereafter.

Will you kindly instruct Mr. Stickney not to put up the flags on Monday, & we will pay you the \$1000—and the balance soon thereafter.

Truly,  
(S'g'd)

J. D. CROISSANT.  
JOHN O. JOHNSON.

#### EXHIBIT No. 4.

Croissant, Sigsbury & Co., Bankers (Limited), 610 Eleventh St N. W.

Telephone 573-2.

WASHINGTON, D. C., May 2, 1892.

Mr. Geo. B. Starkweather.

SIR: In consideration of a deed to 70,000 sq. feet of ground in Crescent Heights, we this day hand you one thousand dollars, a balance of four thousand five hundred dollars to be paid before the deed is made of record. This transaction is made in contemplation of a larger purchase of which this is to form a part although is inde-

[\* Words enclosed in brackets erased in copy.]

pendent of that until that larger purchase is consummated, or declared void.

(S'g'd)

J. D. CROISSANT.  
JOHN O. JOHNSON.

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MAY 28TH, '92.

Mr. Starkweather:

It is thought best to perfect title to Spring St. lots that we bid the property in to-day but this in no way modifies our agreement of May 2 '92 or its supplement of today.

EXHIBIT No. 5.

Liber 1786, Folio 89 *et seq.*

Geo. B. Starkweather	}	Receipt. Recorded May 20 <sup>th</sup> , 1892, 10.11 a. m.
to Croissant and Johnson, Trs.		

WASHINGTON, D. C., May 2<sup>nd</sup>, 1892.

Received from John D. Croissant and John O. Johnson trustees, a deposit of one dollar (\$1.00) to be applied in part payment of purchase of 400000 sq. ft. of ground more or less, situated at the junction of Fourteenth and Spring streets Mount Pleasant, D. C. I reserve the right to remove the buildings from the premises within thirty days from date of a written notice from the trustees. I agree to deliver all the ground in the original tract owned by me, also all the Spring St. front now owned by colored people. If a good title cannot be given to all the above tract, then the money is to be refunded, and sale declared off. The price for the entire tract to be \$75,000.00; and I reserve the right to subscribe for any amount up to 14 shares of 2,500 each, whenever the syndicate shall be organized. The balance not subscribed by me to be paid as follows: One half in cash

the balance to be applied to the liquidation of the trusts, and  
145 interest computed to May 2, 1892, as may be shown by the abstract hereafter to be procured. If these trusts shall be

found to exceed the balance due me, I hereby agree to surrender to the trustees such an amount of my subscription as may be found necessary to cover and remove these trusts. The amount coming to me after deducting the above recited amounts, to be paid either in cash or by notes secured on the property, payable within five years from date, or when the property is sold by the trustees, with interest at 5% payable semi-annually. A full settlement and transfer of title according to this agreement to be made on or before July 15, 1892.

GEO. B. STARKWEATHER.

Acknowledged before me, A. B. Dent a notary public, this 2nd, day of May, 1892.

[NOTARIAL SEAL.]

A. B. DENT,  
*Notary Public.*

DISTRICT OF COLUMBIA.

OFFICE OF THE RECORDER OF DEEDS, *December 18, 1900.*

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 1686 fol. 89 *et seq.* one of the land records of the District of Columbia.

LEE F. SCHAYER,  
*Dyp. Recorder of Deeds.*

Stamp.

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EXHIBIT No. 6.

WASHINGTON, D. C., *May 27, 1892.*

Mr. Geo. B. Starkweather.

DEAR SIR: Before any more money can be paid to you by us as trustees in the purchase of Crescent Heights the following points must be agreed to.

1. The total cost of this property including the colored holdings is to be seventy five thousand dollars, (\$75,000) and if you fail to get the titles to these colored holdings by June 1, 1892, then the trustees are to be considered as authorized to purchase the colored holdings, at the lowest possible price and to charge you for the same, an amount not to exceed thirty four cents per sq. foot, the trustees to pay the balance if more is required.

2. A deed of all the property now owned by you and known as Crescent Heights, to be delivered to the trustees.

3. All the conditions recited in contract of May 2-1892 to be fully carried out, and we agree to meet them fully and promptly as far as our part is concerned.

Yours truly,  
(S'g'd.)

J. D. CROISSANT,  
J. O. JOHNSON, *Trustees.*

Notarial Seal.

I hereby agree to the conditions provided the bond lien on the property (nominal \$100000) be left for me to settle and \$10,000 cash be paid me as soon as deed to second 7 acre tract is delivered by June 1st 1892.

(S'g'd.)

GEORGE B. STARKWEATHER.

147 DISTRICT OF COLUMBIA, ss.:

I, Rutledge Willson, a notary public in and for the said District, do hereby certify that George B. Starkweather, party to a certain instrument in writing, bearing date on May 27, 1892 and hereto at

tached, personally appeared before me in said District the said George B. Starkweather being personally well known to me as the person who executed the said instrument in writing and acknowledged the same to be his act and deed.

Given under my hand & official seal this 1st day of June A. D. 1892.

[SEAL.]

(S'g'd.)

RUTLEDGE WILLSON,  
Notary Public.

(Endorsed on back :) Office of the recorder of deeds Washington, D. C. Agreement between Geo. B. Starkweather and J. D. Croissant and J. O. Johnson trustees. 3 50 p m

Received for record June 1 1892 and recorded in Liber No. 1679 folio 422 *et seq.* of the land records of the District of Columbia.

B. K. BRUCE, Recorder.

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EXHIBIT No. 7.

Liber 1724, Folio 112 *et seq.* S. J. F.

George B. Starkweather <i>et ux.</i>	}	Deed. Recorded August 4, 1892,
to		
Croissant & Johnson.		

3.20 p. m.

*This indenture, made this first day of June, A. D. 1892, witnesseth,*  
That George B. Starkweather and Emma L. Starkweather his wife, of the District of Columbia, parties hereto of the first part, for and in consideration of fifty-six thousand two hundred and fifty (\$56250) dollars in current money of the United States to them paid by John D. Croissant, and John O. Johnson, of the same place, parties hereto of the second part, receipt of which at the delivery hereof is hereby acknowledged, have bargained and sold, granted, enfeoffed and conveyed, and do hereby bargain and sell, grant, enfeoff, and convey unto and to the use of the said John D. Croissant, and John O. Johnson, their heirs and assigns, and the survivor of them his heirs and assigns, the following described land and premises, with the improvements, ways, easements and appurtenances thereto belonging, situate and lying in the District of Columbia, to wit: Parts of tracts known as Paduath and Pleasant Plains, containing seven (7) acres, more or less, and being the same property conveyed to said George B. Starkweather by deeds recorded in Liber 1172 folio 398, and Liber 1193, folio 272 of the land records of the District of Columbia. Also all that portion of lot one of Holmead's part of Pleasant Plains, as conveyed by William Holmead to V. C. Lewis by deed of the 14th day of July 1886: the land hereby intended to

be conveyed being also described in a certain deed of trust recorded in Liber 1365 folio 248 of the said land records.  
*To have and to hold* the said land and premises with the im-

11—1538A

provements, ways, easements and appurtenances unto and to the use of the said John D. Croissant and John O. Johnson, their heirs and assigns, and the survivor of them his heirs and assigns. In and upon the uses and trusts following, that is to say: *In trust* for the sole use and benefit of the persons who have contributed to the purchase of said described land, their heirs and assigns as tenants in common, in the shares and proportions in which they have respectively contributed, with full power and authority in them, the said parties hereto of the second part, or the survivor of them or the heirs of the survivors from time to time, and at all times the same or any and every part thereof to manage, control, let, lease, sell or mortgage, and the rents, issues and profits thereof to collect and receipt for, and the same and every part thereof, from time to time, and at all times to convey to such person or persons, to such uses and in such quantity and quality of estate or estates, whether in fee simple, absolute, or by way of trust or mortgage, or for any less estate as the said parties hereto of the second part, or the survivor of them, or his heirs shall in their or his discretion deem most for the interest and advantage of all parties concerned, without any liability or accountability of any tenant, purchaser, or purchasers, mortgagee, or mortgagees or person or persons loaning money to see to the application of any money or monies paid or advanced to the said parties of the second part or the survivor of them, in account of said real estate or any part thereof. And the said George B. Starkweather hereby

150 covenants with the said parties hereto of the second part their heirs and assigns, and the survivor of them, his heirs and assigns to forever warrant and defend the title to said granted premises, unto the said parties hereto of the second part, their heirs and assigns, and the survivor of them, his heirs and assigns, from and against all persons claiming the same or any part thereof, by, through or under the said parties hereto of the first part, or either of them, and at the cost of the person requesting the same, to execute and deliver any other or further deed or deeds, deemed by legal counsel necessary to more fully assure the title to said granted premises unto the said party hereto of the second part their heirs and assigns, and—the survivor of them, his heirs and assigns.

*In testimony whereof*, the parties of the first part have herunto set their hands and seals on the day and year first hereinbefore written.

GEORGE B. STARKWEATHER. [SEAL]  
EMMA L. STARKWEATHER. [SEAL]

Signed, sealed and delivered in the presence of:  
CHARLES WALTER.

DISTRICT OF COLUMBIA, To-wit:—

I, Charles Walter, a notary public in and for said District hereby certify that George B. Starkweather, and Emma L. Starkweather,

wife of said George B. Starkweather, the grantors in and who are personally well known to me as the persons who executed the foregoing and annexed deed dated the first of June, A. D., 1892, personally appeared before me in the District aforesaid, and acknowledged said deed to be their act and deed. And the said Emma L.

151 Starkweather, wife of the said George B. Starkweather, being by me examined privily and apart from her said husband, and having the deed aforesaid fully explained to her by me, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this first day of June, A. D., 1892.

CHARLES WALTER,  
*Notary Public, D. C.*

[NOTARIAL SEAL.]

# DISTRICT OF COLUMBIA:

OFFICE OF THE RECORDER OF DEEDS, *Oct. 20, 1904.*

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber 1724, fol. 112 *et seq.*, one of the land records of the District of Columbia.

R. W. DUTTON,  
*Deputy Recorder of Deeds Dist. of Col.*

[SEAL.]

## EXHIBIT No. 8.

We, the undersigned, for ourselves, our heirs, executors or administrators, mutually agree as follows:

We hereby agree to take the number of shares set opposite our respective names in the tract of land known as "Crescent Heights" and located at the junction of Fourteenth and Spring streets, Mount Pleasant, D. C., and containing ten acres more or less. (At 152 the rate of \$7500.00.)

The terms of payment to be one-half cash when the subscription is made, balance upon call of the trustees, when found necessary to meet the payment of the trusts on the property as they may fall due, to the extent of not more than \$17,000, these calls to be made pro rata on all shares except those subscribed for by the owner, George B. Starkweather, which shares shall be considered as fully paid. The balance either in cash or by a note secured on the property, payable when the property is sold by the trustees with interest at 5% per annum, payable annually.

The property to be delivered to us or our trustees free and unincumbered except as to the above and in case a perfect title to the property cannot be so passed (including the small buildings on Spring St.) then the money paid by us is to be returned to us and

we are to be released from further obligations. And we hereby name as our trustees with full powers J. D. Croissant and J. O. Johnson and request and authorize them to act as our trustees in holding, managing and selling the property, and they are authorized to deduct from the amount received by them for sales a commission of 5% for their compensation and to divide the profits between us, the undersigned in proportion to the amounts paid in by us.

Each share to represent a subscription of \$2500, upon which the cash payment will be \$1250.

153	Name.	No.	Shares.
	J. D. Croissant .....	Two.....	2500
	John O. Johnson.....	Two.....	2500
	E. S. Parker.....	One.....	\$1250
	C. A. Baker.....	One.....	\$1250
	W. E. Barker.....	One.....	\$1250
	Victor Mindeleff.....	One.....	\$1250
	Ellis Spear.....	1.....	1250
	Geo. H. Johnston.....	One.....	1250
	Stanley Johnson .....	Two.....	p'd 2500

Declined. Returned deposit of

Chas. S. Baker .....	One.....	\$100
Albert C. Peale.....	One.....	1250
Henrietta Stuart.....	One.....	1250

[On the margin:] { Geo. B. Starkweather Thirteen shares (13).  
 { John T. Dyer (By J. O. J.) One share.  
 { Herbert W. T. Jenner, [Two shares —]\*  
 { Two (2) shares.

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## EXHIBIT No. 9.

*Power of Attorney.*

WASHINGTON, D. C., Dec. 14, 1897.

We, the undersigned, hereby appoint Herbert W. T. Jenner, trustee, of Washington, D. C., our attorney-in-fact, to bid for us at an auction resale of about seven acres of land near Washington, D. C., to take place on December 16, 1897, under a deed of trust recorded in Liber 1365 folio 218 *et seq.* or any other postponement of said resale, or subsequent resale, to bid in the property for as small a sum as possible, the outside limit to be twenty-four thousand dollars (\$24000).

And we hereby agree to pay Mr. Jenner our proportionate shares of the total cost and tax deeds on said property already obtained by him, and we agree to pay our proportionate shares of the deposit

[\* Words enclosed in brackets erased in copy.]

money on the day of sale and the balance of the purchase money within the period and on the terms set forth in the advertisement under which the sale is made, our said proportionate interests or shares to be as stated below under our respective signatures.

(Signed) R. G. CAMPBELL, one-fourth interest.  
 ELLIS SPEAR, one-tenth "  
 E. S. PARKER, one-eighth "  
 HERBERT W. T. JENNER, remainder of interest.

True copy.

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# EXHIBIT No. 10.

No. 20, Whole Number of Interests, Thirty-one (1) Shares.

## *Syndicate Certificate.*

Know all men by these presents, that we, J. D. Croissant and John O. Johnson, trustees, as joint tenants in fee, under certain deeds from Geo. B. Starkweather and Emma, his wife, and recorded in the land records of the District of Columbia, hold the real estate situate in the District of Columbia, and designated as follows, to wit: All of those certain pieces or parcels of land and premises known and distinguished as and being the 400,000 square feet, more or less, known as Crescent Heights, at the junction of Fourteenth street (extended) and Spring street, Mt. Pleasant, D. C.

Whereas, Geo. B. Starkweather, has contributed \$2500 of the sum expended for the purchase of said real estate, and is, therefore, entitled to one-thirtieth aforesaid undivided interest in said real estate:

Now, therefore, in consideration of the premises and said payment, receipt whereof from said Geo. B. Starkweather is hereby acknowledged, we, the said J. D. Croissant and J. O. Johnson do hereby declare that we hold the said real estate upon trust as follows, for said Geo. B. Starkweather, his heirs and assigns, to the extent of one-thirtieth aforesaid undivided interest: that is to say: in and upon the trusts set forth and declared in said deed.

It is further understood and agreed as follows:

156 The trustees shall be entitled to and be allowed a joint commission of three per cent. on all receipts except from assessments heretofore or hereafter paid by members of the syndicate, and from loans negotiated by the trustees.

This declaration and the interest hereunder shall, at all times, be subject to assessment for its proportionate part of money necessary to pay the expenses incurred in the execution of the trusts as provided in the deed to said trustees, hereinbefore recited, which said assessments shall be payable within thirty days after written notice thereof shall have been mailed, postpaid, to the person assessed, or personally served upon him, and in default of such payment the said trustees, or the survivor of them, are hereby authorized to sell



the interest of such person so in default, either at public or private sale, after such notice and upon such terms as they or the survivor shall deem best, and to transfer such interest to the purchaser, free from liability on his part, for the application of the purchase money. In the event of any such sale the proceeds shall first be applied to payment of the assessments, in default, with interest at 6 per cent. from date of notice until paid, and the surplus shall be paid over to the owner of such interest, his heirs or assigns.

This declaration and the interest hereunder may be transferred by writing, under seal, and upon such transfer the assigned declaration shall be surrendered to the trustees, and a new declaration issued in the name of the purchaser, and the trustees shall not be bound to take notice of the rights of a transferee who fails to  
 157 surrender such assigned declaration and to procure a new one in his own name.

Any transferee of such declaration, and the interest hereunder shall thereby be subrogated to all the rights and subjected to all the liabilities of the original holder; and the said Geo. B. Starkweather as evidence of the acceptance of this declaration, and to confer all necessary power upon said trustees, and the survivor of them in the premises, as above set forth, has hereunto set his hand and seal the day and year last herein written.

Witness our hands and seals, this 7th day of April, 1893, at Washington, D. C.

Signed, sealed and delivered in presence of—

EVANSTEIN BARRIE as to—

J. D. CROISSANT. [SEAL.]  
 JOHN O. JOHNSON, *Trustee*. [SEAL.]  
 GEO. B. STARKWEATHER. [SEAL.]

Endorsed on Back.

*Form of Transfer.*

For and in consideration of — dollars, to me in hand paid I do hereby convey, transfer and assign to said — —, heirs and assigns, all interest in and to the within-described real estate, and do hereby direct — — trustees, to issue said — — heirs and assigns, a new declaration of trust in lieu of the within declaration.

Witness — hand and seal this — day of —, 189—.

— —. [SEAL.]

GEO. B. STARKWEATHER.

Transfer fee, \$1.00.

Witness:

CHAS. E. GREER. [SEAL.]

## 158 EXHIBIT No. 11.

791 ASYLUM AVE., HARTFORD, CT.

MY DEAR FRIEND: I have been to see Mr. B. and he has sent instructions to Mr Wright the trustee, in regard to releasing the Crescent Heights or Sanitarium property, to you, on the payment of five thousand dollars.

I earnestly hope you will be able to complete the arrangement and by doing so, we can make a beginning of closing up this long continued business.

Yours, as ever,  
(S'g'd)

E. B. HUBBARD.

Monday evening, Dec. 9th, 1895.

## 159 EXHIBIT No. 12.

Filed Oct. 18, 1904.

About the 29th of January 1889 I gave a certificate to Mr. George B. Starkweather as to the title to lots called "Top Top" part of Pleasant Plains on which favorable certificate Mr. now Judge A. C. Bradley made a loan taking a deed of trust to Messrs. Duvall and Cole to secure the same. This trust was recorded 29th January 1889. There has been no other trust on said land recorded since that time and of course no change of record.

I find no judgments or other lines of record affecting said land.

The collector's certificate will show as to taxes.

WM. R. WOODWARD.

17th August 1889—9 a. m.

## 160 EXHIBIT No. 13.

William R. Woodward, President: Wm. Redin Woodward, Vice-President: Ashley M. Gould, Secretary.

1756.

Order No. 1757.

WASHINGTON, D. C., *July 7th*, 1896.

Mr. George B. Starkweather to the Washington Title Insurance Company, Dr.

Offices: The Washington Title Insurance Co. building, 464 Louisiana avenue.

Removed to 507 E street, N. W.

1892.

May 28. To continuation of title to lots 1, 2, 3, 6 to 44 in sub Pleasant Plains from Oct. 4, 90..... 5-

" " " continuation of title to lots in Tip-top..... 10-

15-

[Written across face.] Duplicate.

Paid, the Washington Title Ins. Co. April 17 /93.

G. R. L.

Make cheques payable to order of company.

161

EXHIBIT No. 14.

To Mess. D. C. Reinold and C. G. Berryman, Washington, D. C. :

As executrix of the last will and testament of Steven A. Hubbard late of Hartford, Connecticut, I hereby make demand of you for a certain promissory note now in your possession given and signed by Mr. George B. Starkweather to said Hubbard in his life time, dated at Washington, D. C., Dec. 2nd 1889 for the sum of fourteen thousand five hundred and sixty dollars payable two years after date to the order of said Stephen A. Hubbard, for value received, with interest at the rate of six per cent. per annum payable semi-annually which said note is secured by a deed of trust. You will please deliver said note to Robinson White, Esq., of Washington, D. C.

Hartford Conn. July 12, 1890.

ELIZABETH B. HUBBARD,  
*Executrix of Will of Stephen A. Hubbard.*

EXHIBIT No. 15.

Johnston, Reinohl & Dyre, Counsellors in Patent Causes, N. E. Corner Seventh and G Streets, Opposite U. S. Patent Office.

WASHINGTON, D. C., Sept. 8, 1901.

Received of Messrs. Reinohl and Berryman a promissory note for \$14560.00 dated Dec. 2-89, and payable 2 years after date to the order of Stephen A. Hubbard.—Secured by deed of trust and signed by Geo. B. Starkweather—maker. Also two blank deeds of release signed by Stephen A. Hubbard party in interest.

ROBINSON WHITE.

162

EXHIBIT No. 16.

To Mess. D. C. Reinold and C. G. Berryman, Washington, D. C. :

Please deliver to Robinson White, Esq., of Washington, D. C. the two blank deeds or releases signed by Mr. Stephen A. Hubbard in his life time and now in your hands. Please consider this order your receipt for the same.

Hartford Ct. July 12, 1890.

ELIZABETH B. HUBBARD,  
*Executrix of the Will of Stephen A. Hubbard.*

## EXHIBIT No. 17.

\$1,500.00

For value received I promise to pay to Stephen A. Hubbard or order thirty days after the presentation hereof, the sum of fifteen hundred dollars (\$1500.00) with six per cent. interest added from date.

GEO. B. STARK.

Washington, D. C., July 1st, 1886.

(Written across face.)

Exchanged Sep. 8<sup>th</sup> '90 for note of \$14560 bearing date of Dec. 2<sup>nd</sup> '89.

D. C. REINOHL, *Trustee*.

163 \$600.00. WASHINGTON, D. C., March 3rd, 1887.

Two months after date I promise to pay to Stephen A. Hubbard or order six hundred dollars, value received.

GEO. B. STARKWEATHER

(Written across face.)

Exchanged Sep. 8<sup>th</sup> '90 for note of \$14560 bearing date of Dec. 2<sup>nd</sup> '89.

D. C. REINOHL, *Trustee*.

\$7,100.00.

APRIL 25, 1887.

On demand or sixty days after date I promise to pay to Stephen A. Hubbard or order seven thousand one hundred dollars value received at six per cent. interest from to-day.

GEO. B. STARK.

No. — Due —.

(Written across face.)

Exchanged Sep. 8<sup>th</sup> '90 for note of \$14,560 bearing date of Dec. 2<sup>nd</sup> '89.

D. C. REINOHL, *Trustee*.

164 EXHIBIT No. 18.

(\$400.00 100)

(No. 30096)

( B )

WASHINGTON, D. C. Mar. 14, 1894.

Three months after date, I promise to pay to the order of Herbert W. T. Jenner four hundred 00 100 dollars, at the Second National Bank, of Washington, D. C., without defalcation, for value received, with interest at the rate of ten per centum per annum from

the date hereof till paid; and, as collateral security for the payment of this obligation on the day of the maturity thereof, have delivered therewith the following, that is to say: One share or syndicate certificate (No. 11) of "Crescent Heights", J. D. Croissant and John O. Johnson, trustees, of which I am the owner of one half and H. W. T. Jenner, the other half. Which collateral I hereby authorize and empower the holder of this obligation (provided the same be not paid at maturity) to sell, either at the stock exchange or at public or private sale, at the option of the said holder; and to transfer, assign and deliver the same to the purchaser or purchasers thereof, without reference or notice to me; and, if, in the opinion of the holder of this obligation, the value of the said collaterals, or any substituted or hereafter deposited, should at any time be less than \$400.00 100 dollars, the undersigned shall, upon demand, furnish such further security as will be satisfactory to said holder; and, in case of failure so to do, this note thereupon, at the option of said holder, shall become due and payable forthwith, and the whole or

any part or parts of said securities, or substitutes, or additions,  
 165 may be sold as herein provided, at the option of said holder; and in case of any sale or other disposition of any of the securities aforesaid, the proceeds thereof shall be applied, in the first place, to the payment of all costs and expenses incurred; in the second place, to the payment of the amount then due on this obligation; and lastly, to return to Geo. B. Starkweather whatever residue, if any, may then remain; it being also distinctly understood that should there be any deficiency I further promise and agree to pay the same to the holder of this obligation, on demand.

It is also agreed and understood, that upon the sale of any of the said collaterals, the holder of this obligation, at his option may become the purchaser thereof, and hold the same thereafter in his own right, absolutely free from any claim of the undersigned.

This deposit of security is without prejudice to the right of the holder of this note, at his option, to enforce collection of the same, after its maturity, by suit or in other lawful manner.

GEO. B. STARKWEATHER

1024 Pa. Ave., S. E.

No. — Due —.

[Written across the face:] Paid canceled Adjusted Sold Sept  
 25 1894

WASHINGTON, D. C. March 27, 1898.

Received of George B. Starkweather one share or syndicate certificate (No. 11) in the pieces or parcels of land known as "Crescent Heights" of which J. D. Croissant and John O. Johnson, trustees, are joint tenants in fee, the said George B. Starkweather having sold me an undivided one-half part of the said share.

HERBERT W. T. JENNER.

166 Ohio bank stock was exchanged for the other share in Cres. H's synd. which Jenner took from G. B. S. putting his own price on bank stock.

## EXHIBIT No. 19.

H. Bradley Davidson,  
Attorney at Law.

John C. Davidson,  
Notary Public.

Davidson and Davidson, Real Estate and Loan Brokers, 1338 F. St. N. W., Adjoining Ebbitt House, Washington, D. C.

Oct. 12<sup>th</sup>, 1897.

Messrs. Andrew B. Duvall and Chas. C. Cole, trustees:

You are hereby requested to advertise and sell the tract of land known as part of "Padsworth" and "Pleasant Plains" now called "Crescent Heights" as said tract is described in the deed of trust for Geo. B. Starkweather dated Jan'y 29<sup>th</sup> 1889 and recorded Jan'y 29 '89, in the land records of the District of Columbia default having been made in the payment of interest on the note secured by said deed of trust due July 29 1897.

THOS. H. GATHER, *Trustee*.

Present holder of note.

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## EXHIBIT No. 20.

Articles of agreement made and concluded at Washington, District of Columbia this 21st day of Sept. A. D. 1887 by and between George B. Starkweather of the first part, and Jessie L. Mindeleff of the second part both residents of the said District. Witnesseth, that the said party of the first part on the 26th of March 1887 purchased of Mary A. Bacon *et al.* a tract of some sixty acres of land, more particularly described in Liber No. 1244 folio 272 *et seq.*, one of the land records of the District of Columbia for six thousand dollars (\$6,000.00) with the sanction and for the benefit of the party of the second part and received towards the purchase price (through the husband, Victor Mindeleff) five hundred and twenty five dollars (\$525.00).

And, further, that with the sanction of the party of the second part said tract has been subdivided by H. W. Newby and Co., and is known and platted by said firm of civil engineers, as being in the "Creston" section of *Agassiz park*. And further, that with the sanction of the party of the second part lots 1, 2, 3, and 4 of block 21 in Creston, the same being a part of the Bacon tract, have been sold to Charles C. Darwin.

And further, that, whereas the party of the second part now desires to modify the original plan and acquire title to the unsold por-

tion of the aforementioned block 21 and to 39/60 of the lots in the remainder of the Bacon tract that is the 123 lots selected by Victor Mindeleff and marked "M" on the tracing now in the hands of H. W. Newby and Co. the party of the first part covenants and agrees to deed in fee simple to the party of the second part, 168 the aforesaid part of block 21 and the 123 lots "M," designating them by number in the deed according to the plat of the same, when recorded, upon the payment of three thousand three hundred and seventy five dollars (\$3,375.) still due.

And the said party of the second part, in consideration of the premises hereby agrees to pay to the party of the first part, his heirs executors administrators or assigns not latter than March 25th of each of the next ensuing five years not less than thirty nine sixtieths of the amount falling due on maturing notes, which aggregate one thousand dollars—or be it, six hundred and fifty dollars by March 25th of each year, towards the three thousand three hundred and seventy five dollars till all is paid, together with the punctual payment of the corresponding semi-annual interest.

And it is further covenanted and agreed by and between the parties hereto that in case of default in the payments stipulated to be made by the said party of the second part or any one or part thereof then upon the request of the party of the first part and the return of the money paid or so much of it as shall not be covered by other indebtedness, the party of the second part shall sign and duly execute a quit claim deed to all the premises contemplated in this agreement.

And it is further covenanted and agreed that for the more certain fulfillment of this agreement the party of the first part shall give a receipt for the five hundred and twenty five (\$525) dollars already paid acknowledging the same before a notary making it a part of this agreement and placing the same upon the land records 169 of the District of Columbia.

In witness whereof the parties hereto have hereunto set their hands and seals this day and year first aforesaid.

GEO. B. STARKWEATHER.  
JESSIE L. MINDELEFF.

In presence of  
L. M. SAUNDERS.  
R. D. HOPKINS.

170

*Defendant's Testimony,*

Filed May 23, 1904.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER ET AL., Com- plainants, vs. HERBERT W. T. JENNER ET AL., Defend- ants.	}	In Equity. No. 20205.
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WASHINGTON, D. C., *March 29, 1904,*  
Tuesday, at 11 o'clock a. m.

Met, pursuant to agreement of counsel, to take testimony in the above entitled cause on behalf of the defendants.

Present: Richard P. Evans, Esq., and Edwin Forrest, Esq., solicitors for complainants, and B. F. Leighton, Esq., solicitor for defendant Herbert W. T. Jenner, and R. Golden Donaldson, Esq., of counsel for all other defendants.

Whereupon HERBERT W. T. JENNER, one of the defendants herein and a witness in his own behalf, after having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. LEIGHTON:

Q. What is your occupation, Mr. Jenner? A. Patent-attorney.

171 Q. Are you one of the parties to this suit? A. I am.

Q. Do you know the other parties? A. I do.

Q. Are you one of the shareholders in the Crescent Heights syndicate? A. I am.

Q. How many shares of stock do you own in the syndicate? A. I own eight now.

Q. From whom did you acquire them, and how, and when? A. The two shares I first owned I purchased from the trustees. Two more I purchased from George B. Starkweather, and two I purchased from Stanley Johnson, and two I purchased from a Mrs. Levin-good.

Q. At the time you purchased the certificates of stock, or shares in the syndicate, from Starkweather, what did you know about the condition of the title to this property? A. I knew of all the various encumbrances on it of record, including the Hubbard, or blanket trust, and was informed that the blanket trust could be released upon payment of five thousand dollars.



Q. By whom were you so informed? A. By Mr. George B. Starkweather, and by Mr. John O. Johnson.

Q. Mr. Starkweather has testified in this case as to ill-feeling existing between him and yourself; state whether there is such  
172 feeling, and if so, its origin. A. I have no personal ill-will for Mr. Starkweather. Mr. Starkweather has been the cause of some ten thousand dollars of my money being tied up and unproductive to me, and I have done the best I can to protect my interests in this money.

Q. Well, state whether or not you and he have had any personal differences, and if so, what they were, what the character of them was. A. The syndicate, in which, at the time of the first sale, November, 1897, I held four certificates, was sold out at public auction so far as seven acres of its ground was concerned, and by that sale I lost my interest in the property, and subsequent to that sale Mr. Starkweather approached me and tried to borrow a considerable sum of money from me, which I refused to lend him, and he was *was* much irritated at being unable to obtain any more money from me; and he then told me that he would not have sold these two shares of stock to me, which he had sold for a valuable consideration, except that he knew they were worthless.

Q. Was this statement made to you in writing, or was it made to you orally? A. That statement was made to me orally, but he made other statements to me about that time in writing.

Q. Have you them with you? A. I have.

Q. Will you produce what you have?

(Witness produces a paper.)

Q. This paper is addressed to H. W. T. Jenner, Esquire, is not dated, and does not appear to be signed; in whose handwriting is it?  
173 A. It is in the handwriting of George B. Starkweather.

Q. When did you receive it, and from whom? A. I received it from George B. Starkweather—

MR. FORREST: Wait a minute; I would like to look at that before you offer it in evidence.

MR. LEIGHTON: I am not offering it in evidence.

WITNESS (continuing:)—on November 19th, 1897, and I made a note of the date on the corner of it.

Q. That endorsement on the corner is in your handwriting? A. It is.

MR. LEIGHTON: I offer that in evidence.

NOTE: And the same is accordingly filed herewith by the examiner, marked "Defendants' Exhibit, P. M., No. 1."

MR. FORREST: I object to it as immaterial and irrelevant to the issues pending in this controversy.

Q. Of what did the syndicate property consist?

MR. FORREST: That is objected to because it appears in writing and that is the best evidence.

A. It consisted of ten acres of ground.

Q. Well, go on and describe where situated and how situated.

A. Ten acres of ground on Fourteenth street, extended, and bordering on Spring street, District of Columbia.

174 Q. What portion bordered on Spring street? A. The southern portion, which was not a part of the seven acres which was sold at auction in 1897 and 1898.

Q. What was the condition of this property that abutted on Spring street; was it improved or unimproved, and was it all owned by the syndicate, and how was it situated? A. A large portion of the Spring Street frontage had been sold by metes and bounds to colored people, who had built small frame houses on some of the lots purchased by them; others of these lots had no houses on them. There were various small pieces of ground in between these lots thus held by colored people, which were owned by the syndicate at the time it purchased the property from Mr. Starkweather, and the trustees of the syndicate purchased some lots from the colored people for the benefit of the syndicate. There were other lots which they were unable to purchase from the colored people, and they never did acquire any title to them.

Q. Now, you speak of a sale at public auction; what sale was that? A. The sale at public auction of seven acres of the syndicate property in November, 1897.

Q. Under what trust; who were the trustees? A. The trustees were Duvall and Cole.

Q. Under the first trust? A. Under the first trust on the property.

Q. Were you present at that sale? A. I was.

Q. Were you a bidder at that sale? A. I was not.

175 Q. Who purchased the property at that sale? A. It was purchased by a man by the name of Ricker, on behalf of George B. Starkweather.

Q. How much money had you in this syndicate at the date of this sale? A. About ten thousand dollars.

Q. Were you interested at all in the first sale of the seven acres, in the purchase made by Starkweather? A. No, I was not.

Q. Were you consulted by Starkweather before that sale in respect to the propriety of buying it in? A. I was not.

Q. What were the encumbrances upon this property at the time of the purchase from Starkweather, if you know? A. At the time that the syndicate purchased the property from Starkweather, I only knew of three; the first trust to Duvall and Cole, the second trust to secure myself a note of two thousand five hundred dollars, and a third trust to secure a larger amount to a man by the name of Mindeleff. I afterwards was informed that there were a great many other encumbrances upon the property, but I did not know anything about them until later.

Q. Well, were there, in point of fact, other encumbrances of which you knew nothing?

Mr. FORREST: That is objected to because the record is the best evidence of any existing encumbrances, and the oral testimony of the witness is therefore incompetent.

176 A. There were.

Q. State when you found out about the encumbrances, and what they were.

Mr. FORREST: Objected to as immaterial.

A. The trustees, Croissant and Johnson, obtained an abstract of title after they purchased from Mr. Starkweather, and after they received the deeds from him, and that abstract of title disclosed a number of encumbrances. I cannot remember them all; one of them was the blanket trust to secure Mrs. Hubbard.

Q. In what amount? A. I forget the exact amount.

Mr. FORREST: All this testimony with reference to encumbrances is objected to as not being the best evidence, the record being the best evidence of such encumbrances, if any.

Q. It covered other property? A. It did.

Q. How many shares had you purchased of the syndicate when you ascertained about this blanket trust?

Mr. FORREST: That is objected to as immaterial.

A. Two.

Q. You have stated that Mr. Starkweather said that the blanket trust could be released, so far as the syndicate property was concerned, on the payment of five thousand dollars, when you purchased the two shares from him. Now state what about that.

Mr. FORREST: That is objected to, as I do not understand the witness to have so testified.

Q. State whether or not that was a part of your contract,—a condition upon which you purchased these shares, and whether it was carried out.

177 Mr. FORREST: That is objected to as attempting to vary the terms of a written contract by oral evidence.

A. I purchased the two shares which I bought from him personally on the faith of his assurance that the Crescent Heights property could be released from the blanket trust on the payment of five thousand dollars.

Mr. FORREST: That answer is objected to on the ground that the statement of the witness is immaterial and irrelevant to the issues in this cause, this not being a bill for the sake of setting aside a sale of the two certificates to him by Starkweather on the ground that they were sold under misrepresentation and fraud.

Q. Was that condition upon which you purchased the shares from Mr. Starkweather carried out?

Mr. FORREST: Same objection; it is immaterial.

A. The property was never released from the blanket trust by the payment of five thousand dollars.

Q. What effort was made to secure its release, by you or by Starkweather? A. After I had become the purchaser of four shares of the stock, and had about ten thousand dollars in this syndicate, I asked Mr. Johnson for more detailed information, and he was very obliging indeed, and gave me all the information he could, and I found it very satisfactory until I asked him to show me the contract referred to, that the property would be released from the blanket trust on the payment of five thousand dollars, and then he had no contract. The trustee, Mr. Croissant, also had no contract, and I told him—

Mr. FORREST: Wait a minute.

178 Q. State what you did, or whether you did anything, or whether or not Mr. Starkweather did anything to obtain the release of the Crescent Heights property from this trust.

Mr. FORREST: That is objected to as being immaterial to the issues here, and for the further reason that under the contract by which this property was sold by Starkweather to the trustees representing the syndicate, the latter obligated themselves to look after the payment of this trust, and Mr. Starkweather had nothing whatever to do with that payment, the trust being assumed as part of the purchase price.

A. I don't know that Mr. Starkweather did anything towards trying to get this trust released. A few members of the syndicate were informed of the condition of affairs, and at a meeting of these members with the approval of the trustees, I entered into correspondence with Mr. Buck, of Hartford, Connecticut, who was attorney for Mrs. Hubbard, the holder of the blanket trust, and within two weeks of that time I went to Hartford and had a personal interview with Mr. Buck and Mrs. Hubbard, and at that interview, and for some months following, I did my utmost to try to get them to accept five thousand dollars and to release the syndicate property from the blanket trust, but they refused to do so.

Mr. FORREST: I object to the statements of the witness as to alleged conversations with others, out of the presence of the complainants, and as hearsay testimony, and therefore incompetent.

Q. Was, or not, this the blanket trust that Mr. Starkweather  
179 agreed to have released on the payment of five thousand dollars.

Mr. FORREST: Objected to as immaterial.

A. I will have to explain a little more. When I was in Hartford,  
13—1538A

Mr. Buck and Mrs. Hubbard wanted me very much to purchase the blanket trust note, and when I returned to Washington I tried to get others to join with me in purchasing that note in order that we might release this property, and Mrs. Hubbard and Mr. Buck had also promised me to consider what they would do in the matter of releasing the property on payment of five thousand dollars, and after I returned to Washington Mrs. Hubbard wrote a letter to Mr. George B. Starkweather agreeing to take the amount of five thousand dollars. Mr. Starkweather went to see the trustees about it, and I wrote to Hartford, promising that the money should be paid, but before the money could be paid Mr. Buck, at Hartford, had telegraphed to Mr. Wright, Jr., as Mrs. Hubbard's Washington attorney not to accept five thousand dollars, or do anything in the matter. The letter which Mrs. Hubbard wrote to Mr. Starkweather was the outcome of my efforts to get this property released.

Mr. FORREST: So much of the answer of the witness as states what took place between himself and others, not in the presence of complainants, is objected to as hearsay evidence, and therefore incompetent. To so much of the testimony as relates to the contents of the letter, objection is made as it is incompetent, as the letter itself is the best evidence. Objection is also made as to the statements as to the alleged contents of a telegram not produced, on the ground that the testimony is incompetent and not the best evidence.

180 Q. Did Mrs. Hubbard, the holder of this note, refer you to her representative here, Mr. Wright?

Mr. FORREST: Objected to as immaterial.

A. No, not at the time of my interview with her. Mr. Wright, Jr., was not appointed as her attorney until after I returned to Washington from Hartford, and it was Mr. Buck, her Hartford attorney, who referred me to Mr. Wright.

Q. Did you have any interviews with him? A. I had repeated interviews.

Q. With what result?

Mr. FORREST: That is objected to as immaterial.

A. He refused to accept five thousand dollars and release the property, and held out the previous offer to me that I should purchase the blanket trust note.

Q. Mr. Starkweather has testified to your taking title to certain lots that belonged to the syndicate; what have you to say about that? A. The lots referred to are small, fragmentary portions which are between the lots which were sold to colored people. They aggregated about half an acre of ground. At the time they were deeded by the trustees to me, they were in the line of proposed public street, and they were deeded to me in order to afford a means whereby I might be refunded certain money which I advanced the syndicate, and other assistance I would give them when this street was opened by

the District government and some money should be paid to the holder of these lots, or the property taken for the purpose of running the streets.

181 Q. On what terms or conditions did you take the title?

MR. FORREST: That is objected to, as the deed speaks for itself.

A. I held a small amount in cash to the order of the trustees at the time I received the deed, and I gave them a written contract agreeing to pay them one-half of the amount that I should receive whenever these lots were taken.

MR. FORREST: I call for the production of the written contract.

Q. Where is that written contract? A. It was filed as an exhibit in suit 16,612.

Q. What became of these lots? A. I deeded them back to the syndicate trustees, voluntarily, when the District Commissioners abandoned their intention of putting the street through at that point.

Q. Mr. Starkweather says that you deeded them back because of his filing of the suit, 16,612; what do you say to that? A. There is nothing in it that I deeded them back to the syndicate in consequence of an order passed by Justice Cox, and he is mistaken in that, because Justice Cox passed no order. The lots were deeded back to the syndicate because it was never the intention of the trustees or myself that I should become the owner of any portion of this property that was not to be taken for a public street.

Q. What monies, if any, did you advance to the trustees by reason of your having the title to this property? A. On the strength  
182 of having the title to this property, I took up one of the interest notes on the first trust, and I paid some other amounts for them at various times. I cannot remember the exact amount at present. The note I took up was for several hundred dollars.

Q. You stated that Starkweather did not comply with the terms of his purchase at the first sale. State whether or not the property was offered again for sale by the trustees? A. The property was offered again by the trustees, Duvall and Cole, in February, 1898?

Q. Were you present at that sale? A. I was.

Q. Who became the purchaser? A. I became the purchaser, as trustee for myself and three others, who joined with me.

Q. Who were they? A. They were Robert G. Campbell, Ellis Spear and E. Southard Parker.

Q. Who were present at the sale? A. There were a number of persons present at the sale, many of whom I was not acquainted with.

Q. What about the bidding? A. I was the highest bidder at that sale.

Q. Were there, or not, other bids than yours? A. There were other bids.

Q. Was Starkweather present? A. I think I saw him there.

Q. Were the trustees present—Duvall and Cole? A. Mr. Duvall was certainly there; I think I remember Mr. Cole.

183 Q. In the third paragraph of complainant's amended bill in this cause, he avers that the said trustees unlawfully, illegally and fraudulently, in violation of their duties as trustees, and in combination, confederacy, and unlawful and fraudulent collusion with the defendant, Jenner, and for the purpose of securing him, said Jenner, an unlawful and fraudulent advantage in the purchase and acquisition of said property, permitted, and allowed, urges, invited and insisted, etc., that said property be sold. What do you say about that averment? A. I deny all those allegations.

Q. Was there any arrangement between you and the trustees who were selling this property, Duvall and Cole, in regard to your purchasing it?

Mr. FORREST: That is objected to because there is not allegation, as I recall the bill, of any confederation on the part of the trustees under the deed of trust, but the trustees of the syndicate.

A. None whatever.

Q. Was there any arrangement, or agreement, or understanding with the trustees of the syndicate, such as is stated in this bill? A. None whatever.

Q. Was there with anybody else, and if so, what?

Mr. FORREST: Objected to as immaterial.

A. The only understanding or agreement I had was that contained in the power of attorney which Mr. Starkweather has filed a copy of in this suit.

Q. That was with whom? A. That was with R. G. Campbell, Ellis Spear and E. Southard Parker, and that power of attorney was given later,—entered into after these seven acres of property  
184 had been sold out and the syndicate broken up and brought to an end so far as the seven acres of property was concerned by the sale of this property at the first auction sale.

Mr. FORREST: I object to so much of the answer of the witness as states his conclusions as to the breaking up of the syndicate, as not being statements of fact, but mere conclusions of the witness, and I call upon the witness to produce the original power of attorney referred to.

Q. Where is that power of attorney that you spoke of? A. It is in my possession.

Q. Have you it here? A. I have not.

Q. Complainant has offered in evidence the bill and proceedings in equity cause No. 16,612, filed by him against you and others. State whether or not the filing of that bill had any effect upon the syndicate, and what?

Mr. FORREST: Objected to as immaterial.



A. The bill, as originally filed, was considered to be somewhat frivolous, and I think it had not much effect. It was a bill for specific performance, asking that the trustees be required to purchase more property, and that I be required to—

MR. LEIGHTON: No matter about stating the bill, which shows for itself what was in it. All I wanted was the effect of the bill upon the syndicate.

MR. FORREST: Same objection.

185 A. The filing of the amended bill practically broke up the syndicate, because the amended bill disclosed Mr. Starkweather's intention to repossess himself of the property.

Q. As to the power of the trustees to borrow on behalf of the syndicate, what effect had the filing of that amended bill?

MR. FORREST: That is objected to as immaterial.

A. No one would lend them any money after the amended bill was filed, that I am aware of. The syndicate stockholders refused to put any more money into it after that.

MR. FORREST: Answer objected to as immaterial.

Q. State whether or not you had any other arrangement with any other members of the syndicate, other than this you have given, at the time you purchased the property under the deed of trust sale.

A. None whatever.

Q. Did you have any other agreement with any other members of the syndicate? A. I had no other agreement. I might possibly have had some conversation with some of them, but it is so many years ago I cannot possibly remember now.

Q. Was there or not any understanding that you was to purchase this property and hold it for the benefit of the syndicate? A. There was no understanding whatever. I was to purchase this property for the benefit of myself and the three others whose names I have given, and for no other person or persons.

Q. What became of Campbell's interest under your purchase?

186 MR. FORREST: Objected to as immaterial.

A. He failed to pay any portion of his deposit money, and also failed to settle up within the time allowed, and he received no interest in consequence.

Q. Was he notified to comply with the terms of the agreement? A. I went to his office and urged him to do so, but he was not willing to do so.

MR. FORREST: All this testimony with reference to Campbell is objected to as immaterial, and being hearsay testimony, is also incompetent.

Q. Who has paid the taxes on this property since its purchase by you? A. I have.



Mr. LEIGHTON: I think you can take the witness, Mr. Forrest,  
HERBERT W. T. JENNER.

Subscribed to before me this 2nd day of May, 1904.

P. H. MARSHALL,  
*Examiner in Chancery.*

At this point an adjournment was taken, subject to agreement of counsel.

P. H. MARSHALL,  
*Examiner in Chancery.*

187 In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER ET AL., Com-	} In Equity. No. 20205.
plainants,	
<i>vs.</i>	
HERBERT W. T. JENNER ET AL., Defend-	}
ants.	

WASHINGTON, D. C., April 20, 1904,  
Wednesday, at 11 o'clock a. m.

Met, pursuant to adjournment, to continue the taking of testimony in the above entitled cause on behalf of the defendants.

Whereupon, at the request of the solicitor for the complainants, an adjournment was taken until Thursday, April 21, 1904, at 1:30 o'clock p. m.

P. H. MARSHALL,  
*Examiner in Chancery.*

WASHINGTON, D. C., April 21, 1904,  
Thursday, at 3 o'clock p. m.

Met, pursuant to adjournment, to continue the taking of testimony in the above entitled cause on behalf of the defendants.

Present: Edwin Forrest, Esq., of counsel for complainants, and B. F. Leighton, Esq., of counsel for defendants.

Whereupon—HERBERT W. T. JENNER, the defendant who has already testified herein, was examined and testified as follows:

188 Cross-examination.

By Mr. FORREST:

Q. Since your direct examination in this case, have you read over your testimony? A. I have glanced over it.

Q. Have you read it through? A. I have not read it through carefully.

Q. You have read it through sufficiently, have you not, to note certain corrections in the testimony? A. I have noted two or three verbal errors in it, but I do not see anything that requires change.

Q. Then, if I understand you, the testimony as reduced to type-writing is a correct transcript of the testimony as given by you on the direct examination? A. I think so.

Q. When did you become, for the first time, interested in this property—not referring now to the deed of trust that was given to secure you in the sum of twenty-five hundred dollars? A. It is impossible for me to give the exact date, but it was at the time this syndicate was formed.

Q. Well, now, the first writing in evidence in this case with reference to the acquisition of this property by Croissant and Johnson, trustees, from Mr. Starkweather, is dated May the 2nd, 1892. Had you, at that time, determined to take an interest in this property, when purchased? A. Have you the paper there you refer to,—I will look at it?

Q. I have not the paper before me, but it was placed as an exhibit in equity cause 16,612, and is the first paper, as shown  
189 by the evidence in that case, signed by Mr. Starkweather and the trustees, Johnson and Croissant, looking to the purchase of this property, and I want to know by my question whether it was at that time that you had determined to take an interest in this property, as a syndicate holder, when purchased by these trustees? A. I could not say whether I had or not on the date you mention.

Q. Did you, or not, know of the steps that were being taken by Johnson and Croissant looking to the purchase of this property from Mr. Starkweather? A. Mr. Starkweather told me some things about it, and I saw Mr. Johnson about the same time and he told me some other things, but I do not know now whether I knew exactly what was being done or not.

Q. I don't mean to ask you whether you knew all the details of the transaction, but whether or not, at the time these negotiations were in progress looking to the purchase of this property, you had determined to become interested in it as a shareholder? A. My impression is that at the time I determined to become a shareholder I was informed that the negotiations were completed.

Q. Then at the time that Johnson and Croissant were negotiating for the purchase of this property from Mr. Starkweather, you had not then determined to become interested in it; is that right? A. It would be impossible for me at this lapse of time to testify as to the exact date I determined to take an interest as a stockholder.

Q. Now, I show you this exhibit, J. O. J. No. 3, as filed in  
190 equity cause No. 16,612, and the several names attached to that paper, and ask you whether the name H. W. T. Jenner attached thereto is your signature? A. That is my signature.

Q. Now, have you any way of telling, the paper being undated, when your signature was annexed to that paper? A. I have no way of fixing the exact date.

Q. Now, I notice that opposite your name on that paper is a subscription of two shares in this Crescent Heights syndicate; have you those certificates with you. A. I have not.

Q. Do you now recall what date they bear? A. I do not, but I may say that those certificates were not issued to me until a long time after I signed the subscription list.

Q. And you do not recall now what date they bear? A. I do not.

Q. How long, if you can recall, did you own these two shares before you acquired others? A. I cannot remember.

Q. If you can recall, from whom did you acquire the subsequent shares immediately after you got these two that you subscribed for? A. The next two I purchased from George B. Starkweather.

Q. Do you remember about when it was that you purchased from Mr. Starkweather? A. I could not give the date.

Q. How many did you purchase? A. Two shares.

191 Q. Do you recall now what you gave for them? A. I gave five thousand dollars, in round figures.

Q. That was the face value of the two shares? A. It was.

Q. Can you tell me how long it was after your purchase from Starkweather of these two shares before you acquired any other shares? A. I cannot state exactly, but it was a long time.

Q. Well, could you say whether it was prior to 1900 or not? A. I cannot remember.

Q. Is there any way by which you can refresh your recollections? A. Not without going to my office.

Q. Well, from whom were the shares purchased immediately next after you had purchased from Starkweather? A. I purchased two from Mrs. Levingood and two from Stanley Johnson about the same time; I do not remember which two I purchased first.

Q. Do you recall what these purchases, per share, cost you? A. Not exactly.

Q. Can you tell me how close to the face value? A. I only paid a small sum for them.

Q. Did you buy them outright? A. I bought them outright.

Q. Is there any way by which you can refresh your recollection as to the date of that transaction? A. Not without going to  
192 my office, and then it is doubtful if I could give the exact date.

Q. Can you fix the date by any sale of any part of the premises, as to when you purchased these four shares? A. It was quite a long time after I purchased the seven acres at auction.

Q. That is, a long time after 1898? A. Yes.

Q. I would like you to fix, if you can, Mr. Jenner, what these certificates cost you?

MR. LEIGHTON: The question is objected to as not responsive to anything brought out in direct examination, and not material.

MR. FORREST: Though counsel may not appreciate it, the record will show the materiality of this cross examination.

Q. How came you to purchase these certificates from Stanley Johnson and from Mrs. Levingood? A. Both of these parties lived at a distance from Washington, and they wished to have nothing further to do with this syndicate and wanted me to purchase them.

Q. And they applied to you?

Mr. LEIGHTON: Question objected to as irrelevant, and not responsive to anything brought out on direct examination.

A. Mr. Stanley Johnson asked me a number of times wouldn't I buy his stock, and I finally did so. Mrs. Levingood I never met. Someone who represented her in the matter sold the stock to me, and I do not very clearly remember just when he first offered them to me, or how the purchase came about.

193 Q. Do you recall through whom the transaction was made, acting in the interest of Mr. Levingood? A. I cannot remember his name at the present moment.

Q. Now, you say also that there is no means, as I understand you, whereby you can fix the date of this purchase from Starkweather of those two shares? A. Do you mean when I purchased the two shares of stock from Starkweather?

Q. Yes. A. I am not certain what memoranda I may have among my papers. The shares of stock which were issued to me by the trustees, Croissant and Johnson, to take the place of those sold to me by Mr. Starkweather, which were turned in to them and cancelled, would be dated shortly after the date on which I purchased this stock.

Q. So that could be shown by the records in the hands of the trustees? A. I think the stub on the stock book would show that.

Q. The date of the transfer, or the issuance of the new certificates to you? A. It would show the date of the issuance of the new certificates to me.

Q. Now, could you say whether you had purchased these two shares from Mr. Starkweather before the sale of '98?

Mr. LEIGHTON: Question is objected to for the reason before stated.

A. Yes, before that time.

Q. Within a year before that?

194 Mr. LEIGHTON: Same objection.

A. I could not say as to that.

Q. Will you, at the next hearing, produce the certificate called for by me heretofore in this cross-examination? A. I am ready to produce all of the certificates.

Mr. FORREST: Kindly do so, then, at the next hearing, and until the production of such certificates my cross-examination upon this line will not be further proceeded with.

Mr. LEIGHTON: It was the duty of counsel, if he desired these cer-

tificates at this examination, to serve notice—he had ample time to have done so—and they would have been present at this hearing. We are under no obligation to produce them unless he gives us notice.

Q. When did you first have any knowledge of this property that was purchased by the Crescent Heights syndicate? A. Shortly before the date of the deed of trust, which secured the note of two thousand five hundred dollars.

Q. Independently of the record, do you recall the date of that note? A. I do not.

Q. Could you say whether it was within a year of the purchase of this property by the syndicate? A. I think it must have been more than a year before that.

195 Q. It has been suggested to me that the date of that note was in August, 1889; does that in any way refresh your recollection as to its date? A. The only way I know would be to look at the recorded deed of trust.

Q. Well, my question was, in the first instance, whether independently of that you recalled the date? A. No.

Q. At the time that you took that deed of trust on the property from Mr. Starkweather, did you have an examination made as to condition of the title? A. I had a certificate of title as to the seven acre tract, which was the tract upon which this note of two thousand five hundred dollars was secured. Mr. Starkweather subsequently borrowed that certificate of title from me and he never returned it.

Q. Did you procure that certificate of title, or was it procured by Mr. Starkweather and shown to you? A. I do not remember ordering it.

Q. Now, can you recall what trusts, if any, were on that property prior to the giving of this trust to you? A. There was only one trust.

Q. What was that? A. That was the trust under which this seven acre tract was sold out at auction to me.

Q. That was what was known as the Ashford trust? A. No, it was the trust in which Duvall and Cole were trustees.

Q. And that was the only trust, as I understand you, that was shown on that abstract, or of which you had knowledge, at the time of the giving of the trust to you—is that right?

A. The certificate of title only showed this one trust.

Q. And you knew of no other? A. I knew of no other.

Q. Now, prior to the contract of purchase from Mr. Starkweather by Johnson and Croissant, did you have any talk with Johnson and Croissant about the purchase of this property and the condition of the title? A. I had some talk with Mr. John O. Johnson—I think not with Mr. Croissant. I do not think I knew Mr. Croissant at that time.

Q. And was the subject of the condition of this title talked over between you, that is, respecting trusts? A. To some extent. Mr.

Johnson told me of a third trust existing on the property, mine being the second. The third trust was what was known as the Mindeleff trust.

Q. Was that the only additional trust that he told you of? A. That was the only additional trust.

Q. Was anything said about the trust to Ashford? A. Nothing whatever.

Q. And you knew nothing of it? A. I cannot remember that he said anything about it.

Q. And you knew nothing of it at the time of this purchase by Croissant and Johnson of the Starkweather property? A.

197 The Ashford and Stickney trust, if my memory serves me right, is not upon the seven acres which we have been talking about, but upon another piece of ground which, at that time, I had no interest in.

Q. Did you know at the time that this property was purchased by the syndicate from Starkweather that the Stickney and Ashford trust existed on this property? A. They did not inform me. The Ashford and Stickney trust was, as I understood it, on the small piece of ground nearer to Spring street than the seven acre tract.

Q. Then it did cover a portion of the ten acre tract? A. It covered a portion of the ten acre, but not of the seven acre.

Q. And did you not also know of the trust to secure Warner that had been made by Starkweather at the time of the negotiations for the purchase of this property by Johnson and Croissant? A. I do not remember hearing anything about it.

Q. Did you hear anything, or know anything, about the trust to secure C. B. Rheem, in Warner's office, at the time of the negotiations for the purchase of this property of Johnson and Croissant? A. I do not remember being told anything about that.

Q. And you did not know then, as I understand you, that such a trust existed upon this property at the time of the negotiations for its purchase by Johnson and Croissant? A. I do not remember having any information of it.

198 Q. Now, this trust that was given to you by Starkweather for twenty-five hundred dollars, did it represent twenty-five hundred dollars that had been loaned by you to Mr. Starkweather in bulk, or was it to secure several sums that had been loaned by you to Starkweather at certain times? A. It did both. It secured several notes, but I am under the impression that I gave him the money for those notes at different times.

Q. So that, if I understand you, the money that was represented by this twenty-five hundred dollar trust represented transactions that had run a certain period of time? A. A very short period of time.

Q. Now, in securing this money from you, did Mr. Starkweather ever tell you for what purpose he wanted it? A. He did not.

Q. Never, at any time? A. I think not.

Q. Don't you recall, for instance, that on one occasion when he

asked you for a loan of money, that it was obtained for the purpose of making a payment on account of the Rheem, or Warner, note?

A. I do not remember being told anything of the sort.

Mr. LEIGHTON: Question and answer both objected to as irrelevant, and as not responsive to the direct examination.

Q. When did you first see, after these negotiations for the purchase of this property by Johnson and Croissant had been consummated, a certificate of title to this property? A. It is too long ago for me to give any date.

Q. Do you remember of seeing, before the consummation of these negotiations by conveyance, a certificate of title of the Washington Title Insurance Company, showing the condition of the title? A. I do not.

Q. Do you remember seeing—to be more specific—a certificate of title of the Washington Title Insurance Company, dated on or about the 27th of May, 1892, showing the condition of this property as to trusts and incumbrances? A. I do not remember seeing any such certificate.

Q. Did you hear that there was such a certificate in existence?

Mr. LEIGHTON: Question objected to as immaterial, and not responsive to anything brought out on direct examination.

A. I do not remember having been told of any such certificate of title.

Q. And knew nothing of it? A. I think not.

Q. When did you first see, if at all, a certificate of title to this Starkweather property? A. I first saw a certificate of title to the seven acres shortly before I made the loan of twenty-five hundred dollars. Subsequently, I saw an abstract of title which, I think, was made by the Columbia Company.

Q. Now, as to the date of that? A. I could not give the date; I think it was after I had purchased two shares of stock, or agreed to purchase two shares of stock.

Q. After you had subscribed? A. Certainly, after I had subscribed.

Q. But how long you cannot say? A. I could not say how long after.

Q. Now, something was said by you about the purchase of what is known as the colored holdings. Do you recall the fact that it was determined by the trustees, or by the trustees and yourself as interested in the property, that it was not desirable to purchase these colored holdings that had not been already purchased, either by Mr. Starkweather or the trustees? A. There was a time, some considerable period after they purchased this property, when the District government laid off a highway through a portion of this ten acre tract, and as that highway was to wipe out the remainder of the colored holdings, there was something said about it being undesirable to purchase any more of them.

Q. And it was so determined by the trustees, was it not? A. I think on the faith of that street being put through, they thought that, at all events for the time being, it was not desirable.

Q. And they so determined, didn't they, and did not take any further steps to acquire the outstanding colored holdings? A. I do not think the trustees, Johnson and Croissant, took any further steps to acquire them after that street was platted.

Q. That was done after consideration by the trustees, and it was finally determined, was it not, not to do that? A. That would be a matter between the trustees; I did not know; I was not a party to that.

201 Q. You knew of it? A. I only assume they had some conversation with each other.

Q. Look at this paper which I now show you, being the answer of the defendants in equity cause No. 16,612, filed September 11th, 1895, and to the name attached thereto, H. W. T. Jenner; I ask you if that is your signature? (Handing paper to witness). A. That is my signature.

Q. You made affidavit to that, Mr. Jenner, didn't you, as to the accuracy of the statements contained in your answer? A. I think so.

Q. I call your attention specifically to that part of the answer just shown you contained in paragraph 8, as follows: "That further your defendants say that the Commissioners of the District of Columbia, in their plan recently approved for a permanent system of highways in the District of Columbia, have provided for a boulevard along the Spring Street front of the aforementioned parcel of land which will cause to be condemned all the said detached holdings on the Spring Street frontage, and that the purchase, therefore, as desired by your complainant, George B. Starkweather, would merely necessitate a defense in condemnation proceedings when the said District Commissioners shall proceed to improve and widen Spring street." At the time of filing your answer, that was the fact, was it not? A. I think so—substantially correct. I think the intention was not to widen Spring street, though, but to make a wide driving boulevard which would obliterate Spring street.

202 Q. I called your attention to your sworn answer, which I understood you to say at that time was a true statement of the facts; is that right? A. It was certainly a fact that the District Commissioners platted a street which would wipe out these colored holdings.

Q. And the statement that I have read to you from your answer at that time was a true statement of the facts, was it not? A. It was substantially correct.

Q. In the direct examination you produced a paper, addressed to H. W. T. Jenner, unsigned and undated; how did you get possession of that paper? A. It was handed to me by Mr. George B. Starkweather.

Q. For what purpose? A. For the purpose of inducing me to give him money.



Q. Do you know why he did not sign it? A. I do not.

Q. Do you know why he did not sign it? A. He did not tell me.

Q. You say that he handed you that paper? A. He did.

Q. Didn't you take that paper up from the table, or where it was, and retain it? A. I did not.

Q. Did he ask you for it after you got possession of it? A. He asked me for it the next day following the day he left it with me.

203 Q. He did not ask you for it on the day that you got possession of it; did he ask you for it? Q. He did not ask for it on the day he handed it to me.

Q. You have no answer to give, then, why it was not signed by him, have you? A. I might assume a reason, but I could not testify as to why he did not sign it.

Q. And you say that possession of it was not asked of you until the following day? A. Not until the following day.

Q. What did he say to you then? A. After I had refused to give him any more money, he wanted me to give that paper back to him.

Q. Well, why didn't you do it? A. Well, I considered that the whole matter was an attempt to obtain more money from me upon fraudulent misrepresentations, and I wished to keep it as a memorandum.

Q. A memorandum of what? A. Of the event.

Q. But you did not loan any money on the strength of it? A. I did not.

Q. Then of what was it to be a memorandum? A. A memorandum of what he had proposed to me.

Q. Of a transaction that you did not carry out? A. Exactly.

Q. Did you tell him why you refused to return it to him? A. I think I told him that I wanted to keep it as a memento.

204 Q. A memento of what? A. A memento of the transaction.

Q. But there wasn't any transaction? A. There was no transaction.

Q. Tell me what in that paper indicates in any way an effort on his part to obtain money from you by misrepresentations or fraud? A. In one place in this paper Mr. Starkweather says: "I need fourteen thousand dollars, spot cash, for which I will deed you, or cause to be deeded you, in fee"—then follows a schedule of certain property which he alleges he is able to deed to me. And he goes on to say, "Thus for the favor of fourteen thousand dollars I deed you 150 acres of land." I think that showed that he wanted to get fourteen thousand dollars in cash from me, if possible.

Q. What in that statement of his was there that is not true? I call your attention now to the part that you have just read.

Mr. LEIGHTON: Look it all over, if you want to, Mr. Jenner.

A. In the first part of this paper he says: "Over ten years ago I abandoned the northwest as a field of labor, and have since cen-

tered my efforts in the southeast. This was written within a short time after he had purchased, through his agent, the seven acre tract which is now in controversy, which is in the northwest. I think this statement is hardly in accordance with the facts as disclosed by the record and the testimony in this case.

205 Mr. FORREST: The answer of the witness, so far, is objected to and moved to be struck out on the ground that it is not responsive to my question, and that was, what part of the statement which the witness first read from the paper contained false statements or misrepresentations, and I want an answer to that.

(The question is read to the witness.)

A. I did not read the schedule of property which he proposed to deed to me, and the description of that property is very vague; according to my understanding of that schedule of property, he refers to certain property in Prince George's county, and I am satisfied that at the time he made this proposal he was not in a position to give me a good title to this property.

Mr. FORREST: I object to the conclusions of the witness, and move to strike out the same.

Q. Now, you have stated here that the following statements, in answer to my question, were false as made by Mr. Starkweather, and were made to you for the purpose of obtaining money from you to wit: "I need fourteen thousand dollars, spot cash, for which I will deed you, or cause to be deeded you, in fee, the 59 acre tract which has already cost me fifteen thousand dollars in hard cash; also a nine acre tract for which I recently paid two thousand dollars, assuming an eight hundred dollar trust which runs for years; also an adjoining forty acre tract which has cost me about four thousand dollars during the past ten years; also forty acres more adjacent,

206 which has cost me about four thousand dollars more, but which is worth many times that for special reasons." Now, what part of that statement, as made to you by Mr. Starkweather, was false or a misrepresentation to you for the purpose of obtaining money? A. That he was able to give me a good title to this property.

Q. You say that that was false—that statement of his? A. It was, in my opinion.

Mr. FORREST: The answer is objected to as stating a conclusion and not a fact.

Q. I want you to tell me, Mr. Jenner,—and this is very important—what part of that statement that was made in that paper that you say was handed to you by Mr. Starkweather, and to which I have called your attention, was false? A. At the time I considered this matter, I was satisfied that Mr. Starkweather could not give me a good title, in fee simple, to the property that he enumerates.

Mr. FORREST: Objection is made to the answer of the witness on

the ground that it is not responsive, and I again ask the witness to tell me what statement in the paragraph of that statement that you have quoted from, that you say was false, was false at the time that Mr. Starkweather made it to you?

A. I do not remember which particular piece of property was in a worse condition than any other piece of property, but I am satisfied that the title to some of this property, at all events, was not in a condition in which he could transfer it to anybody by a good deed.

207 Q. I again call for a responsive answer to my question, and I want you to point out any part of that statement that you have read in that paragraph, beginning with the words, "I need fourteen thousand dollars, spot cash," and tell me what statement in there, as made to you by Mr. Starkweather, is false; and I want an answer, and a responsive one, and for you to point out the statement, or statements, that you say were false, and misrepresentations made to you for the purpose of obtaining money.

Mr. LEIGHTON: The witness has already answered that question twice.

A. I am under the impression that I have stated that this paper contained false misrepresentations, but I do not remember having stated that there are any in this particular paragraph which you refer to.

Mr. FORREST: The impressions of the witness are objected to as not competent, and the answer is objected to as not responsive.

Q. In answer to a question put to you by me as to why you retained that paper, you stated a moment ago that you did so for the purpose of keeping the same to show the attempts on the part of Mr. Starkweather to obtain more money from you by fraudulent misrepresentations, and when I asked you to call my attention to the statements in that paper upon which you based that charge, you referred to the paragraph on sheet 2 of the paper, commencing with: "I need fourteen thousand dollars, spot cash," and ending with the words "special reasons." Now, you have just stated that you do not recall, as I recall the testimony, that you had said that he had made fraudulent misrepresentations to you. What  
208 have you now to say, in view of your previous testimony, as to your reason for retaining that paper? A. I have not said what you say I have said.

Mr. FORREST: The record will show that, and I have just obtained it from the examiner.

WITNESS: You asked me to point out in this paper something which would show two things. One was that he attempted to obtain money from me, and another was that such attempt was accompanied by fraudulent misrepresentations, and I only answered the first part of your question when I quoted from a certain paragraph

of this paper, and I only quoted a certain paragraph which in my mind showed that he wanted to obtain money from me. I did not say that in that particular paragraph which I quoted there were or were not fraudulent misrepresentations.

Q. I want to call your attention to this question that I put to you in reference to this paper: "Tell me what is in that paper indicating in any way an effort on his part to obtain money from you by misrepresentation or fraud," and in answer to that you said in one place, "In this paper Mr. Starkweather says 'I need fourteen thousand dollars, spot cash.'" Now in view of the previous question put to you, and your answer, what do you mean by now saying that you did not refer to that paragraph as an evidence of an effort on the part of Mr. Starkweather to obtain money from you by misrepresentations or fraud? A. I referred to that paragraph as an evidence that he wished to obtain money from me.

Q. Then do you desire to withdraw your former testimony— A. I do not.

Q. (Continuing:)—that Mr. Starkweather made the statements in that paper and handed them to you for the purpose of obtaining more money from you by fraudulent misrepresentations? A. I do not desire to withdraw my former testimony, but, if necessary I can explain it at greater length.

Mr. FORREST: I have no objection to your giving any explanation that you desire, in view of those statements of yours with respect to your testimony.

WITNESS: Prior to Mr. Starkweather's handing me that paper, he had obtained considerable sums of money from me upon fraudulent misrepresentations, and I have testified that I considered that this paper was another attempt to do the same thing; and I have also testified that this paper contained misrepresentations, and when I cited another paragraph of it, in which, in my opinion, was a misrepresentation, you stopped me in my testimony and objected to it.

Q. Is that all the explanation that you desire to make? A. That is all I think it necessary to make at the present time.

Q. Tell me one instance, prior to that, where Mr. Starkweather borrowed money from you by false statements or misrepresentations?

A. He borrowed money from me repeatedly, and finally sold me two shares of stock upon the false misrepresentation that the Crescent Heights Syndicate property could be released from the  
210 blanket trust note owned by Mrs. Hubbard, of Hartford, by the payment of five thousand dollars.

Q. Any other misrepresentation that you can think of? A. Mr. Starkweather has made a great many representations to me at various times, and at first I believed what he represented to me to be true, but after having had considerable experience with him, I am very much in doubt as to what was true and what was not true, and I would not like, at the present time, to say anything further, as I would not willingly injure him, or impute to him any greater wrongdoing.

Q. We don't ask you to withhold anything that you are able to state respecting Mr. Starkweather's obtaining money from you, as you say, on false representations, and I want you to give any instance other than the one that you claim to have given, when Mr. Starkweather obtained money from you under false statements or misrepresentations. A. Mr. Starkweather borrowed money repeatedly from me on the promise that he was going to pay it back on a certain date, and he never kept any of these promises that I can remember at the present time.

Q. You got a deed of trust for that money, didn't you? A. I took a deed of trust for the amount of twenty-five hundred dollars, but he repeatedly borrowed small amounts from time to time.

Q. Have they been repaid to you? A. No, he never paid me anything in cash.

211 Q. Does he owe you anything now? A. He does not.

Q. You realized from the twenty-five hundred dollar trust, did you not? A. I received one certificate of the Crescent Heights syndicate.

Q. Of the face value of twenty-five hundred dollars? A. Representing twenty-five hundred dollars.

Q. And at the present time Mr. Starkweather owes you nothing, does he? A. He does not.

Q. Don't you know that at the time Mr. Starkweather had these negotiations with you about the purchase of these certificates, that he had in his possession this letter from E. B. Hubbard in regard to the release of the trust heretofore mentioned? A. It was not in his possession at that time.

Q. How do you know? A. Because I know that this letter was written subsequently to the time when he sold me the stock.

Q. Then, when did he sell you the stock? A. Prior to that; I will have to refer to my papers; I cannot remember the date.

Q. I thought you told me you could not tell when those certificates were transferred to you by Mr. Starkweather; if that testimony was true, how can you say now that it was prior to 1895? A. For this reason; that after I had purchased two more shares of stock from Mr. Starkweather, and had thereby become the owner of four shares of stock, my interest in the syndicate was so large that I questioned Mr. Johnson more particularly as to the details of  
212 the title to the property, and then I found that he had no contract with Mrs. Hubbard whereby this Crescent Heights property could be released from the operation of her blanket trust by the payment of five thousand dollars, and some time after that I went to Hartford, Conn., and interviewed Mrs. Hubbard, and tried to get her to accept five thousand dollars and release the property from her trust, but she would not do so; and I remember perfectly that that letter to Starkweather was not written until after I returned to Washington.

Mr. FORRESTER: All this answer is objected to as not responsive, and

further, as containing hearsay statements of Mrs. Hubbard and also John O. Johnson, the same being incompetent testimony.

Q. Did Mr. Starkweather ever claim to you that he had a contract in writing to release the Hubbard trust on the payment of five thousand dollars? A. He told me that it could be released upon the payment of five thousand dollars, but I do not remember his having said that he had a contract in writing with Mrs. Hubbard to that effect.

Q. Then, so far as you know, he may have had a verbal understanding with the Hubbard interests for the release of the Hubbard trust for five thousand dollars at the time that he made that statement to you? A. I can have no knowledge of any verbal understanding between him and any other parties.

Q. Then why do you say that his statement to you that the Hubbard trust could be released on the payment of five thousand dollars—

WITNESS: Because he did say it.

213 Q. (Continuing.) —was false and untrue at the time that he sold the two certificates to you? A. Because I found afterwards that the Hubbard estate would not accept the five thousand dollars.

Q. And therefore, from that fact, you drew the conclusion that the statement he made to you that it could be done for five thousand dollars was false at the time that he sold these certificates to you? A. That was one reason.

Q. Are there any others? A. There were several other reasons.

Q. State them, please. A. I had been informed by the trustees, Croissant and Johnson, that they had attempted to obtain the release of this property upon the payment of five thousand dollars, and had been unable to get it.

Mr. FORREST: The last statement of the witness is objected to as hearsay, and therefore incompetent.

Q. And therefore you say, because Johnson and Croissant had failed to obtain a release of the property from the Hubbard trust on the payment of five thousand dollars, the statement by Mr. Starkweather to you that he could do it on the payment of five thousand dollars was untrue and false? A. I have given you another reason; I can give you a third reason.

Mr. FORREST: Go ahead.

WITNESS: After I refused to return this paper exhibit to Mr. Starkweather he got angry, and then stated that he would not have sold these shares of stock to me except that he knew that they were worthless.

214 Mr. FORREST: The answer is objected to as not responsive, and as not giving any reason why the statement that the Hubbard property would be released on the payment of five thou-

said dollars, as made to the witness by Mr. Starkweather, was not true.

Q. And because Mr. Starkweather, as you say, made some statement to you in November, 1897, in reference to this paper that you say was not true, you state that as a reason why the statement made by him at the time of the purchase of these certificates by you from him that the Hubbard trust could be released on the payment of five thousand dollars, was not true; is that it? A. I have given three reasons; I can give more reasons if you want them.

Q. I would like to have as many as you can give, especially such as you have already given, if you can give them? A. Another reason is that when I went to Hartford, Conn., to see Mr. Buck, who was Mrs. Hubbard's attorney, he told me that he had had Mr. Starkweather's record looked up by a responsible commercial agency, and he had found that Mr. Starkweather had never been a man of any resources, or any financial resources; that he obtained sums of money from Mr. Stephen Hubbard during his lifetime, and that at that time he was posturing as a real estate agent in Washington; that he had purchased property in the District of Columbia and had taken title to it in his own name instead of that of Mr. Hubbard, and all that the estate had to show for it was the blanket trust note; he further told me that Mr. Starkweather had never paid any interest, or, at all events, had not paid the interest on this blanket trust note, and that Mrs. Hubbard attributed the decease of her husband to the worry caused him by Mr. Starkweather; and that after Mr. Hubbard's death he had induced the widow, Mrs. Hubbard, to part with her interest in the Hartford Courant, which was a dividend paying concern, and sink some twelve thousand dollars or so more of her own money into one of his real estate schemes; that he had promised Mrs. Hubbard to pay interest upon this money, and that he was not doing so. In view of all these circumstances, I think I was very well warranted in not giving Mr. Starkweather any money on November 19th, 1897, when he tried to get me to do so.

Mr. FORREST: The answer of the witness is objected to, in the first place because not responsive; in the second place, because it contains hearsay testimony, and therefore incompetent, and in the third place, because it does not set forth any reason why the statement of Mr. Starkweather that the Hubbard trust could be released on the payment of five thousand dollars, was not true.

Q. These reasons that you gave are the ones that you wish us to understand support your statement that the statement of Mr. Starkweather that the Hubbard trust could be released on the payment of five thousand dollars was not true at the time that you purchased the two certificates from him; am I right in that? A. These statements that I have made are all to show that I considered that Mr. Starkweather was trying to obtain money from me upon fraudulent misrepresentations.

216 Mr. FORREST: The answer is objected to as not responsive, and I want a categorical answer to the question, yes or no. I want an answer to that, either yes or no, Mr. Jenner.

Whereupon the question was read to the witness.

Mr. LEIGHTON: You can answer as you please, Mr. Jenner.

Mr. FORREST: Just give me an answer to that, Mr. Jenner, if you will.

Witness: I cannot give you an answer, yes or no. Confining my answer to the question as to whether the Crescent Heights property could have been released upon payment of five thousand dollars at the time Mr. Starkweather sold me the three shares of stock, I would say that my chief reason for considering that such was not the case is what I have previously stated, that at the time that I refused to return this paper exhibit to Mr. Starkweather, he told me plainly that he would not have sold these two certificates to me except he knew they were worthless, and for that reason I think that the Hubbard trust could not have been released upon payment of five thousand dollars, else otherwise they would be of value.

Mr. FORREST: The answer is objected to as not responsive to the question, and a categorical answer is demanded of the witness to the question.

Whereupon the question was read to the witness.

A. I think I have answered as clearly as I can. If counsel will explain a little more clearly what he wants to get at, I might possibly give him a little more information.

217 Mr. FORREST: My questions as heretofore put are sufficiently plain, and what the complainant wants is the truth. If the witness has no further or more definite answer to make, I will let the question stand at that.

Q. When did you first see this letter of December 9th, 1895, bearing the name of E. B. Hubbard? A. I am under the impression that I first saw this letter when it was filed as an exhibit in the suit No. 16,612.

Q. So that you knew of the contents of this letter on March 14th, 1896? A. I knew of there being such a letter prior to that date, but I had never seen the letter before it was produced in taking that testimony.

Q. The file mark of the clerk of the court shows that it was filed on March 14th, 1896, so you knew of it at that time? A. I knew of it prior to that.

Q. And therefore you knew of the contents of that paper when this statement by Starkweather was made, on November the 19th, 1897? A. I did.

NOTE.—The letter referred to is in the words and figures following:



"791 ASYLUM AVE., HARTFORD, CT.

MY DEAR FRIEND: I have been to see Mr. B. and he has sent instructions to Mr. Wright the trustee, in regard to releasing  
218 the Crescent Heights or Sanitarium property, to you, on the payment of five thousand dollars.

I earnestly hope you will be able to complete the arrangement and by doing so we can make a beginning of closing up this long continued business.

Yours as ever,

E. B. HUBBARD.

Monday evening, Dec. 9th 1885."

Q. When was it that you went to Hartford? A. I will get you the date if you want it; I have got it here.

Mr. FORREST: Well, sir, that is what I want.  
(Witness produces memoranda.)

A. I wrote to Mr. Buck on November the 12th, 1895, and a day was appointed at which we should meet at his office at Hartford, Conn., but I have no memorandum as to the exact day upon which I was at Hartford.

Q. But it was during the month of November or December that you were there? A. During the month of November; I returned before the 1st of December.

Q. Who was it that you saw there? A. I saw Mr. Buck and Mrs. Hubbard and a Mr. George F. Hills, who had something to do with the Hubbard estate.

Q. Who went with you, anyone? A. No one went with me.

Q. Did you make more than one visit to Hartford? A. I only made one visit to Hartford.

Q. Did you have any talk or consultation with either John-  
219 son or Croissant before you went? A. I had with Mr. John

O. Johnson; I am under the impression that I did not see Mr. Croissant.

Q. Johnson knew that you were going? A. Johnson knew that I was going.

Q. As a result of that visit, did you receive any communication from either Mr. Buck or Mrs. Hubbard? A. I kept up quite a lengthy correspondence with them for sometime after I returned.

Q. Did you ever see, during his lifetime, Mr. Stephen Hubbard? A. I never did.

Q. Who was Mr. Buck; was he the executor or administrator of the estate, or an attorney, or what did you understand his position was? A. I think he was Mrs. Hubbard's attorney. I am under the impression that Mrs. Hubbard was executor or administrator, and possibly some others with her.

Q. Now, in answer to a question put to you by your counsel, you say that at the time the syndicate purchased you only knew of three trusts on this property, the one to Duvall and Cole, the one to secure

yourself, and the Mindeleff trust, but that you afterwards were informed, "that there were a great many other incumbrances upon the property, but I did not know anything about that until later." When were you informed, and by whom, that there were other trusts on the property than the three that you have enumerated? A. I could not say now when or by whom. I am under the impression that the first real information I had on the subject was when I looked over the abstract of title which was furnished by the Columbia Company, I think.

220 Q. When was that? A. Why, that was sometime after I signed the subscription list, but I could not say how long after.

Q. Within three months of that time? A. I could not give the date.

Q. Independently of what appeared upon the abstract of title, can you tell us what these other trusts were that you did not know of at the time of purchase? A. I do not like to trust to my recollection for giving a collected account of it. Of course, there was the blanket trust to secure Mrs. Hubbard's note. There was a duplicate of the blanket trust, or another blanket trust of which the blanket trust to secure Mrs. Hubbard's note was a continuation. There was also a bond, something for a large amount—something in connection with an umbrella company, and there were other items, but I cannot remember what they were, so far as the seven acre tract is concerned. The remainder of the tract, forming the Spring Street frontage, had something between ten and twenty items charged against it on the abstract of title, relating to the holdings of the colored people, but I cannot begin to remember what they were about at this time.

Q. I did not ask for the property known as the colored holdings, but I refer more particularly to obligations of Mr. Starkweather that were upon the property and represented by trusts? A. I would not like to trust to my recollection to give more information, but the colored holdings were a portion of the property purchased by the syndicate, in as much as Mr. Starkweather was under obligation to deliver them as well as the property in his own name, and  
221 they therefore were included in the property embraced by the abstract of title, and the liens relating to them appeared in that abstract.

Mr. FORREST: To so much of the answer of the witness as is not responsive to the question objection is made on that ground, and also to the statements of the witness respecting the contents of a writing, as not the best evidence.

WITNESS: I understood you to ask me what was in the abstract.

Mr. FORREST: I did not ask you what was in the abstract, excepting what knowledge you acquired from it as to any outstanding trusts upon the property, and my query was confined to that.

WITNESS: The knowledge of these various trusts was obtained by me from the abstract, and all I remember was in the abstract.

Q. My inquiry, of course, was directed to your knowledge of the trusts independently of the abstract. A. I may have had some other knowledge at that time, but I do not remember it now. Of course I should attach more importance to what I read in an abstract than to anything else.

HERBERT W. T. JENNER.

Subscribed before me this 2nd day of May, 1904.

P. H. MARSHALL,  
*Examiner in Chancery.*

At this point an adjournment was taken until Saturday, April 23, 1904, at 11 o'clock, a. m.

P. H. MARSHALL,  
*Examiner in Chancery.*

222 In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER ET AL., Com-	}	Equity. No. 20,205.
plainants,		
<i>vs.</i>		
HERBERT W. T. JENNER ET AL., Defendants.		

WASHINGTON, D. C., April 23, 1904,  
Saturday, at 11 o'clock a. m.

Met, pursuant to adjournment, to continue the taking of testimony in the above entitled cause on behalf of the defendants.

Present: Edwin Forrest, Esq., of counsel for complainants, and R. Golden Donaldson, Esq., and B. F. Leighton, Esq., of counsel for defendants.

Whereupon — HERBERT W. T. JENNER, the witness under examination at the close of the last session, resumed the stand for further cross-examination.

Cross-examination.

By Mr. FORREST:

Q. In response to my request, you have produced and handed to me eight certificates, two of which bear date February 11th, 1893, one on the first of September, 1893, one, 27th of February, 1894, and four the 9th of June, 1902. Now, as to the certificates bearing date the 9th of June, 1902, have you been able, since the examination the other day, to in any way refresh your recollection as to  
223 what you paid for those certificates? A. I have not tried to; I did not know that you wanted any more information on that subject.

Q. Are you able to say upon what basis, say as to percentage of the face value—

Mr. LEIGHTON: Question objected to as immaterial.

Mr. FORREST: I have not finished yet.

Q. (Continuing :) Of these certificates you gave for the assignment of the interest of the holders of the ones given up when these were issued?

Mr. LEIGHTON: Question is objected to as not responsive to anything brought out on direct examination, and not material.

Mr. DONALDSON: And as wholly incompetent.

A. I am not.

Q. It appears from the record in this case that the amended bill of complaint in 16,612 was filed on May the 6th, 1896, and it appears from your testimony that after May 6th, 1896, the value of these certificates was practically nothing. Can you tell why it is then, that six or seven years after the filing of that amended bill, when you say these certificates were practically worthless, you purchased four of them? A. Yes; the owners of them wished to be released from having anything further to do with the transaction, and they represented to me that they were out of town members, and could not attend to the matter, and that I was living in Washington, and was already heavily interested, and wanted me to buy their interests, and so I took these.

224 Q. But you are not in the habit of buying things that are worthless, are you? A. No; I thought that they would have a small value to me, for the reason that there would be fewer parties to consult with in the matter of getting straightened out.

Q. How do you reconcile the purchase of these certificates with your testimony that the filing of the amended bill in 16,612 practically broke up the syndicate and rendered these certificates worthless? A. I do not see any anomaly in my testimony.

Q. Mr. Jenner, at the time that you got possession of this paper, did you get possession of any other papers from Mr. Starkweather?

(Showing witness Defendants' Exhibit, P. H. M., No. 1.)

A. I think he left a printed list of parties he had interested in some way in the cemetery company he formed.

Q. What became of that? A. I think I have it; here it is, sir.

(Producing paper, and handing same to counsel for complainants.)

Q. Why didn't you return that to Mr. Starkweather? A. For the same reasons heretofore stated with relation to the written paper.

Q. The paper that you now produce is a printed paper, is it not? A. It is.

Q. That contains no statements of Mr. Starkweather, does it? A. It does not.

Q. Then why didn't you return it? A. I have already answered that question.

Q. Is this the only paper, in addition to the paper marked by you

November 19th, 1897, that was left with you by Mr. Starkweather?

A. It was not; he left another, which I now produce.

(Witness produces paper and hands same to counsel for complainants.)

Q. What is that? A. You can see for yourself.

Mr. FORREST: I want the record to show.

Mr. DONALDSON: I object to the witness undertaking to state what it is. The paper itself is the best evidence of what it is, and it would be very difficult to explain it.

Q. What is that paper? A. I think at the time of the interview that Mr. Starkweather represented to me that that paper was something—a pencil sketch—which would give me an idea of the location of the property mentioned in the paper writing.

Q. Why didn't you return that paper to him? A. For the same reason heretofore given.

Q. Did you investigate to find out whether or not the pieces of property marked upon that plat were properties in which Mr. Starkweather had an interest? A. I made some investigation at the time, and I may say that he gave me verbal explanations in regard to the location of these various properties, and he made  
226 pencil marks on a map hanging up on the wall of my office, so that I had some idea of where the property referred to was located.

Q. Was that all the investigation you made? A. I made some inquiry, and I already knew something about some of the property.

Q. I see some writing in ink upon this plat; whose handwriting is that, if you know? A. The writing in ink is in my handwriting. I made that memoranda on the paper at the time Mr. Starkweather gave me the information which that memoranda conveys.

Q. Did you tender that paper back to Mr. Starkweather? A. I did not.

Q. Was any request made of you for its return? A. There was.

Q. And do I understand your reason for refusal is the same one you gave with reference to the pencil statement? A. The same.

Mr. FORREST: I ask that these papers be filed by the witness with the examiner.

NOTE.—Said papers are accordingly filed herewith by the examiner, marked for identification as follows:

"GEORGE B. STARKWEATHER ET AL.	}	Equity. No. 20205.
vs.		
HERBERT W. T. JENNER ET AL.	}	

Marked for identification, April 23, 1904.

P. H. MARSHALL, *Examiner.*"

227 Q. You are the same H. W. T. Jenner against whom Robert G. Campbell filed a bill in equity? A. I am.

Q. You have read that bill, have you not? A. I have.

Q. At the knocking down of this property to you in February, 1898, do you recall how many bidders were competing for the property at that time? A. I do not.

Q. Did you bid personally, or did somebody bid for you? A. I bid personally.

Q. Do you recall the fact that the property was knocked down to Mr. Starkweather, or someone representing him, during the progress of that sale, for twenty-four thousand five hundred dollars? A. Yes, I remember it.

Q. Now, prior to the time that it was knocked down to him, were you a bidder? A. I was.

Q. And what was your last bid before it was knocked down to him for twenty-four thousand five hundred dollars? A. I do not remember the exact figures.

Q. Was it twenty-four thousand dollars? A. I would not like to testify after this lapse of time.

Q. Could you say it was twenty-four thousand one hundred dollars? A. I could not.

228 Q. Do you recall whether or not, before it was knocked down at twenty-four thousand five hundred, you bid over twenty thousand dollars?

Mr. LEIGHTON: Question is objected to as irrelevant and immaterial, and not responsive to anything brought out on direct examination.

Whereupon the question was read to the witness.

A. I do not; I do not recall that it was knocked down to anyone for twenty-four thousand five hundred dollars.

Q. Don't you recall the fact that at that sale there was a bid made of twenty-four thousand five hundred dollars? A. I do not remember it.

Q. (continuing)—and that the party who bid was not able to put up the one thousand cash, and for that reason the bid he offered was not received for twenty-four thousand five hundred? A. I remember that the party made a high bid and was unable to put up the deposit money, but I do not remember that that was the amount of his bid.

Q. Prior to going there at that sale on that day, had the persons you named as interested in the sale agreed upon the highest bid that was to be made for the property? A. They had.

Q. And what was the highest bid that they agreed among themselves to offer for the property?

Mr. LEIGHTON: Question is objected to as immaterial and irrelevant.

A. The terms are fully stated in the power of attorney that is an exhibit in this case.

Q. Haven't you any independent recollection of it? A. I would not care to trust to my recollection. The power of attorney sets the matter out.

Q. I would like to have your best recollection of it, independently of the power of attorney referred to.

Mr. DONALDSON: We object to that because the written paper is the best evidence of the amount, and that is in evidence in this case.

A. I cannot undertake to remember without looking up the paper.

Q. Prior to your making a bid on that property at that time, had you not agreed with those whom you say were associated with you in the purchase, to bid on the property as high as twenty-four thousand one hundred dollars?

Mr. LEIGHTON: We object to that as irrelevant and immaterial.

A. I do not remember that I had.

Q. Do you say that you had not? A. I would not undertake to testify as to any exact figure.

Q. After the property had been bid off for twenty-four thousand five hundred dollars, and the cash deposit was not put up, what according to your recollection, was the next thing that was done in the way of the sale of that property?

Mr. DONALDSON: That is objected to because counsel is assuming that the property was knocked down for twenty-four thousand five hundred dollars, when there is no such testimony in the case.

A. The property was re-cried at once.

230 Q. Pending the inability of the purchaser to deposit the one thousand cash, and the re-crying of the sale, was there any conference or consultation in which you took part between the trustees and the auctioneer? A. None in which I took part, as I remember. I saw the trustees, or one of them—I think I saw Mr. Duvall, talking to the auctioneer.

Q. Was anyone else present at that conversation except Mr. Duvall and the auctioneer? A. There was a crowd of people around them, and I could not tell who was taking part in that conversation.

Q. Did you take part? A. I think not; I have no recollection of saying anything to the auctioneer.

Q. Did you hear the conversation— A. I did not.

Q. Did you hear the conversation between Mr. Duvall and the auctioneer? A. I did not.

Q. Did Mr. Johnson, as you recall, take any part in that conversation between Mr. Duvall and the auctioneer? A. I do not think

80; I do not remember seeing him at the time Mr. Duvall and the auctioneer were talking together. He was in the crowd.

Q. Where was Mr. Croissant, was he present? A. I do not know.

Q. When the sale was re-cried, do you recall what the first bid was? A. I do not.

231 Q. Do you recall whether you made the first bid, or someone competing with you? A. I do not remember.

Q. When the sale was not perfected by the person who bid twenty-four thousand five hundred dollars, were you asked by the auctioneer or the trustees to take the property, or was the property knocked down to you at your highest bid next to twenty-four thousand five hundred?

MR. LEIGHTON: Question is objected to as irrelevant and immaterial, and I desire this objection to apply to all this line of cross-interrogatories.

A. I was not asked anything, and I do not remember that my bid was the next highest bid.

Q. Who else, if you know, was bidding prior to the property's being knocked down for twenty-four thousand five hundred dollars?

A. There was quite a crowd of people there, many of whom I had never seen before, and a number of people who bid. I did not know who was bidding and who was not.

Q. So that outside of yourself and Mr. Starkweather, of someone representing him, you did not know who the bidders were? A. I did not know the man who represented Starkweather or Ricker. Mr. Wright, Jr., was bidding—the attorney for Mrs. Hubbard. I knew him.

Q. Didn't he stop bidding when the property reached seventeen thousand dollars? A. I do not remember. I think that at the final sale he stopped at that figure.

232 Q. And don't you recall that he stopped at that figure when the property was originally cried, and when it reached over twenty thousand? A. I could not recall what he bid in the first part of that sale.

Q. Don't you know that there was no one bidding on the property at this first crying, after it reached seventeen thousand dollars, except you and someone representing Mr. Starkweather? A. I do not remember that; Mr. Starkweather might have had several parties bidding for him for all I know.

Q. How did you bid, by simply nodding, or by stating the amount of your raise? A. I do not remember.

Q. What do I understand you to mean, Mr. Jenner, by your testimony in saying that this syndicate had been broken up by the attempted sale to Starkweather in the fall of 1897; in other words, how did that break up the syndicate? A. The sale of the seven acres to Mr. Starkweather certainly extinguished the syndicate as to those seven acres.



Q. How could it, when the sale was not consummated? A. It broke it up for the time being, at all events. The members of the syndicate considered the syndicate as being brought to an end.

Q. In your testimony you say that the syndicate was broken up and brought to an end so far as the seven acres of the property was concerned, by the sale of this property at the first auction sale. Now, leaving out the question for the moment, how that could be, I want to know, as that sale was not consummated, how the syndicate could be broken up by the attempted sale. A. The various members of the syndicate, at all events, thought it was broken up.

Q. Did anyone withdraw from the syndicate because that sale did not go through? A. The various stockholders thought they were forced out. I do not think they had any idea of withdrawal.

Q. Did they surrender their certificates? A. I do not know of anyone.

Q. Well, how were they forced out? A. By the sale.

Q. But the sale was not consummated? A. But the sale was made.

Q. But the property still belonged to the syndicate, as the sale was not consummated, did it not? A. That is a matter I can hardly testify to.

Q. Well, then, I want to get at, from you, if I can, how this attempted sale of this property broke up the syndicate, as you testified? A. The syndicate was broken up so far as any feeling of membership in it existed amongst the various members, to the best of my knowledge.

Q. And was that the reason why, because you thought the syndicate was broken up, that you then approached two or three members of it to make an arrangement to get this property at a subsequent sale? A. I think the cause of my approaching two or three of the members and getting that power of attorney was because Mr. Starkweather, at the time I refused to return him that printed paper exhibit; taunted me by saying that he would not have sold the stock certificates which he had sold me, to me, except that he knew they were worthless.

Q. And that was the reason why you only approached a few of the syndicate for the purpose of getting them to join with you in the purchase of this property?

Mr. LEIGHTON: Question is objected to as irrelevant and immaterial, and as assuming a fact.

A. Some of the stockholders were out of town people, and I could not see those. I approached one or two because I hadn't money enough to go into such a big purchase by myself.

Q. But the others had an equal interest in that property, to the extent of their syndicate holdings, had they not? A. I cannot testify exactly as to what their interests were.

Q. Well, they had as much interest as you in the property, to the extent that they held *syndicates*? A. I should assume so.

Q. Isn't that a fact? A. So far as I understand your question: I think they had an equal right with myself to bid, if they felt so inclined.

Q. But they were not approached for the purpose of going  
235 into the arrangement for the purchase of this property?

Mr. LEIGHTON: Question objected to as irrelevant and immaterial.

A. I do not know. Some of them may have approached others for all I know. There may have been several combinations, or some of them may have bid singly at that final sale, for all I can tell.

Q. But you never approached anyone else, did you, except Campbell, Spear and Parker? A. I did.

Q. Who else? A. Mr. John T. Dyer.

Q. Anybody else? A. I do not think I approached anyone else.

Q. Do you know whether anybody else besides yourself attempted to get any of the syndicate holders interested in the purchase of this property?

Mr. LEIGHTON: Same objection.

A. I do not know.

Q. As I understand your testimony, you approached Campbell, Spear, Parker and Dyer for the purpose of getting them interested with you in the bidding in of this property, did you not? A. I did.

Q. Were there ever any meetings of this syndicate? A. There have been meetings which I think might be called syndicate meetings.

Q. Prior to 1898, February, do you recall the last meeting of the syndicate? A. I do.

236 Q. When was it? A. It was shortly before the first sale, in which the property was knocked down to Mr. Starkweather's agent.

Q. Do you recall whether Mr. Starkweather was present? A. He was not.

Q. And prior to that meeting, do you recall when was the last meeting of the syndicate? A. Well, I would like to be sure about it; there was a meeting called by the trustees in connection with some assessment. Now that might have been a later meeting than the meeting I have spoken of previously, but that meeting, although called, was not attended by the members of the syndicate in any number. I think that slipped my memory.

Q. But it was called in pursuance of some notice, as you recall it? A. I remember a notice with regard to the meeting called in connection with an assessment.

Q. Why do you say, then, that the filing of the amended bill in 1896 broke up the syndicate when you have just testified that there

were meetings of the syndicate sometime after that? A. It broke up the syndicate in the way that it made its stock unsalable; it broke it up so far as its success was concerned.

Q. Don't you know that there were transfers, or assignments of interest, after May, 1896? A. There may have been.

Q. Don't you know, as a matter of fact, that there were  
237 transfers of interest in certificates after May, 1896?

Mr. LEIGHTON: Question is objected to as irrelevant and immaterial.

A. I should have to look up the dates of those transfers before I could testify on the subject.

Q. But you, yourself, testified that you purchased four in 1902?

A. Yes, but those were purchased more in order to save myself the trouble and expense of conferring with the parties holding them than for any intrinsic value.

Q. Then you were conferring with said *syndicate* holders right along down to the time of the purchase, were you not? A. I had met various of the stockholders at different times and had talked with them on the subject.

Q. As *syndicate* holders? A. As stockholders.

Q. Then you did not regard the syndicate as completely broken up by the filing of the amended bill, did you? A. I regarded it as broken up so far as its success was concerned, but there is a remainder of some three acres of land still in the possession of the syndicate nominally.

Q. Then, do I understand you to say now that the syndicate was not broken up by this proceeding? A. The syndicate was broken up to the extent that its purpose and object were broken up.

Q. You spoke in your testimony of a certain conversation with  
Mr. R. G. Campbell: you know that he is dead, don't you?  
238 A. I do.

Q. What is the condition of the title, so far as it appears of record, of that seven acres now?

Mr. LEIGHTON: Question is objected to as not a proper way to prove title.

A. I am unable to answer your question, as I understand it.

Q. The title of record is in your name now, is it not?

Mr. LEIGHTON: Same objection.

A. The title of record is in the name of Herbert W. T. Jenner, trustee.

Q. You say that is the way the title stands of record? A. It does.

Q. You are certain of that? A. I am.

Q. Does it show, as you recall it, on its face, who Herbert W. T. Jenner is trustee for?

Mr. LEIGHTON: Question is objected to, as the paper itself, or a certified copy, is the best evidence.

A. It does not.

Q. Outside of the deed itself, was there any paper writing executed by you, Campbell, Spear and Parker, setting forth the way in which you held this property, and for whose benefit, as trustee? A. Nothing except the power of attorney already referred to, and the certificates which I have given to these various gentlemen, showing their interest.

Q. Have you one of those certificates with you? A. I have  
239 not.

Q. Is there any trust on that property now? A. There is not.

Q. The purchase by you was made on a cash basis, was it?

Mr. LEIGHTON: Question is objected to as irrelevant and immaterial.

A. I think the terms were one-third cash.

Q. Did you avail yourself of the terms of one-third cash and the balance in one and two years, or pay all cash?

Mr. LEIGHTON: Same objection.

A. I availed myself of the terms, whatever they were.

Q. Have there been any improvements put upon that property?  
A. There have not.

Q. And so far as the lay of the land itself is concerned, it is in practically the same condition now as it was when it was knocked down to you—is that right? A. That is right.

Q. Now, this paper is dated November 19th, 1897, by you as the day of its reception. Do you recall that you had a conversation with Mr. Starkweather about the value of these syndicate certificates a few days before?

(Showing witness Defendants' Exhibit, P. H. M., No. 1.)

A. I recall a conversation which took place at about the date of that paper.

Q. And before you got possession of this paper? A. I do not remember whether it was before or after.

Q. Now, at that conversation, do you recall putting any  
240 value on these certificates? A. I do.

Q. And don't you recall that you said they were not worth over twenty-five cents a piece? A. I do; he asked what I thought they were worth, and I said about twenty-five cents, perhaps.

Q. So that *that* is the value that you put upon those certificates at or about the day of the date of this paper, November 19th, 1897?  
A. It was.

Mr. FORREST: That is all.

Redirect examination.

By Mr. LEIGHTON :

Q. Mr. Jenner, why did you put that value upon the certificates at that time? A. Because the seven acres of the syndicate property had been sold out to some one or other, and the remaining property was, in my opinion, worth just about the amount of the indebtedness of the syndicate, plus the legal expenses which would necessarily be incurred in straightening up matters.

Q. What transpired between the first and the second auction sales to cause you to be a bidder at the second auction sale?

Mr. FORREST: That is objected to as not proper re-direct examination, nothing having transpired in the cross-examination to justify the asking of the question.

A. The attempt of Starkweather to get more money from me was the chief thing I remember transpiring.

241 Q. Was that what induced you to become a bidder at the second sale?

Mr. FORREST: That is objected to as leading, and strikingly suggestive.

A. I think Mr. Starkweather's action had more influence than anything else in inducing me to make a special effort, and also the knowledge that if I did not make any special effort I should be a total loser of about ten thousand dollars.

Mr. LEIGHTON: I offer in evidence the papers, record and proceedings in the case of Campbell vs. Jenner and others, being equity cause No. —.

NOTE.—The same being now on file in this court, are accordingly filed in evidence in this cause by the examiner.

Mr. LEIGHTON: The defendants' evidence is closed.

Recross-examination.

By Mr. FORREST:

Q. Then, do I understand from your statement on redirect examination, that by the purchase of this property as claimed by you, in February, 1898, you did not lose ten thousand dollars? A. I cannot be at all sure but what my ten thousand dollars remains lost.

Q. What is the value of that property now? A. I could not tell you; I am afraid it is very much less than it has been represented all the way through this matter.

Mr. FORREST: That is all.

HERBERT W. T. JENNER.

242 Subscribed to before me this 2nd day of May, 1904.

P. H. MARSHALL,  
*Examiner in Chancery.*

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER ET AL., Com-	} In Equity. No. 20205.
plainants,	
<i>vs.</i>	
HERBERT W. T. JENNER ET AL., Defend-	}
ants.	

WASHINGTON, D. C., April 19, 1904,  
Tuesday, at 3 o'clock p. m.

Met, pursuant to agreement of counsel, to continue the taking of testimony in the above entitled cause on behalf of the defendants.

Present: Richard P. Evans, Esq., and Edwin Forrest, Esq., solicitors for complainants, and B. F. Leighton, Esq., solicitor for defendant Herbert W. T. Jenner, R. Golden Donaldson, Esq., of counsel for all other defendants, and Dewitt C. Croissant, guardian *ad litem* for John D. Croissant.

MR. DONALDSON: We offer in evidence the record and proceedings in equity cause No. 18969, George E. Ricker against Charles C. Cole and others, and also the record and proceedings—

243 MR. FORREST: Let me see those first, Mr. Donaldson. (After inspecting papers.) The record and proceedings in the case referred to and offered in evidence are objected to on the ground that they are immaterial and irrelevant, and that the complainant Starkweather is not a party thereto, nor has he, so far as the record discloses, any interest therein, and as being incompetent so far as throwing any light upon the issues involved in this controversy.

MR. DONALDSON: We offer in evidence the record and proceedings in the case of Elizabeth B. Hubbard against A. B. Duvall and others, equity No. 19856.

MR. FORREST: The same objection is made to the record and proceedings in the last case referred to as was made in the record and proceedings in case No. 18969.

NOTE: The exhibits referred to, being already on file in this court in the above equity causes are filed in evidence herein by the examiner.

Whereupon CHARLES C. COLE, one of the defendants herein and a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. DONALDSON :

Q. Judge Cole, you are the same Charles C. Cole named as one of the defendants in the bill of complaint filed in this cause—George B. Starkweather *vs.* Herbert W. T. Jenner, and others? A. Yes, I am the same person.

Q. You and Andrew B. Duvall, I believe, were trustees under a deed of trust signed by the complainant Starkweather and his wife, dated the 29th day of January, 1889, and recorded in Liber 244 1365, at folio 248? A. Yes, we were the trustees under the deed of trust referred to; Mr. Duvall and I.

Q. I believe there was a sale under that deed of trust; will you kindly state the circumstances under which that sale was had, and if there was more than one, the circumstances of both sales? A. There was two sales under that deed of trust. The first one, however, was not consummated, and the property was re-sold for the reason that the purchaser at the first sale was not able to comply with the terms of the sale. The first sale was made on the 13th day of November, 1897, and the terms of sale not having been complied with, the property was advertised for re-sale, to take place on the 19th day of January, 1898, but on that day—

Mr. FORREST: I wish the record to show that the witness testifying is referring to certain papers in his possession.

WITNESS: Well, I have before me the pleadings in the case of Ricker *vs.* Cole and others, equity No. 18969, and am refreshing my recollection by reference to the answer which Mr. Duvall and I filed in that case.

(Continuing:) —and before the hour of sale, the trustees, Mr. Duvall and I, were served with a restraining order, issued in the said cause of Ricker *vs.* Cole and others, restraining us from making such sale until the further order of the court. Thereupon, on the 26th day of January, 1898, Mr. Duvall and I made and filed a joint answer, as such trustees, in the said cause, and I refer to that answer and adopt it as part of my deposition in this cause, as detailing 245 ing accurately, according to my then and present recollection, the facts in relation to the first sale, at which the property was knocked off to George E. Ricker, who is the complainant in that suit.

Mr. FORREST: To so much of the answer of the witness as is taken from the answer in the suit referred to, objection is made on the ground that the testimony is incompetent for the purpose of referring to said answer to refresh the recollection of the witness, no sufficient foundation having been laid for such refreshment, the witness not

having testified that he could not, without said answer, state the facts in reference to the matters spoken of by him.

WITNESS: I will state in this connection that the property was advertised for sale on the 13th day of November, 1897, at the written request of Thomas H. Gaither, trustee who was the holder of the note secured by the deed of trust under which the sale was made, and he requested the sale on the ground that the interest on the note was in arrears.

MR. FORREST: I call for the production of the written request, and object to any evidence as to its contents as being incompetent.

WITNESS: The written request was exhibited to me by Mr. Duvall, and I do not remember to ever have seen it after he exhibited it to me on the day, or a day or two before, we prepared and signed the notice of sale, and I do not know where it is, and am sure that it is not in my possession nor under my control.

MR. FORREST: The solicitor for the complainant Starkweather renews his objection to the witness stating the contents of any such written request, no sufficient foundation having been laid  
246 for its non-production.

WITNESS: In this connection I will also state that after the sale had been made to Ricker, and on one or more occasions after we had re-advertised the property, and on one or more days when it was expected that it would be sold, Mr. Gaither was there in person in consultation with Mr. Duvall and myself, and urged a re-sale of the property.

MR. FORREST: To so much of the answer of the witness as gives verbal reasons for the sale of the property, objection is made on the ground that such sale could only have been made in accordance with the deed of trust, or by written request of the holder of the note secured thereby.

WITNESS: Upon the filing of the answer of Mr. Duvall and myself in the cause of Ricker *vs.* us and others, the court dissolved the restraining order and denied the injunction, and thereupon we re-advertised the property for sale, and at the re-sale, which took place not long afterwards—I am not able to give the date—there were quite a number of persons present, and pretty lively bidding on the property. I cannot now state how many different persons, or how many different bids, but it was finally sold on that occasion to Mr. Jenner, Herbert W. T. Jenner, at the sum of about seventeen thousand dollars—I do not remember the exact figures, and haven't anything before me to refresh my recollection. That re-sale, at which Jenner became the purchaser, was requested and insisted upon by

Mr. Gaither. I had no consultation with Mr. Jenner, or any-  
247 body else, in relation to a re-sale of the property, and so far as

I have any knowledge, there was no combination between Jenner and anyone else at the sale; certainly no combination between Mr. Duvall and myself and Jenner, nor any understanding between us in relation to a sale of the property.

MR. FORREST: To so much of the answer of the witness as last



given, as states that the sale was made at the urgent request of Gaither, the alleged holder of the note, objection is made on the ground that such testimony is incompetent as authority to make such sale without the production of the written request for same; and to so much of the answer of the witness as states his knowledge of the non-existence of any combination as between others than the witness, objection is made upon the ground that it is based upon hearsay testimony, and therefore incompetent, and solicitor for the complainant here moves to strike out all the testimony of the witness with reference to the case of Ricker *vs.* Cole and Duvall, for the reasons heretofore stated in the objection to the admission in evidence of the record and proceedings in said cause.

WITNESS: Sometime after said sale, and before Mr. Duvall and I had fully disbursed the purchase money and notes that were taken at the second sale, the suit that has been referred to, of Elizabeth B. Hubbard *vs.* Andrew B. Duvall and others, was filed, seeking to have so much of the purchase money as was not applicable to the payment of the deed of trust under which we sold, applied to a deed of trust in favor of said Hubbard. Mr. Duvall and I answered that bill and rendered an account in that cause, and the auditor's report filed in that cause on the 27th of February, 1900, shows the  
218 distribution of the purchase money made by us.

MR. FORREST: The solicitor for the complainant Starkweather objects to so much of the testimony of the witness as refers to the Hubbard case as being incompetent for the reasons heretofore urged, the complainant Starkweather not being a party thereto, or in any way bound by the record and proceedings therein.

WITNESS: I will add that the auditor's report to which I have referred was confirmed by the court.

MR. DONALDSON:

Q. And was disbursement made by you and Mr. Duvall in accordance with that report?

MR. FORREST: Objection is made as to the report of the auditor, and what disbursements, if any, were made by the witness, as to the fund referred to in that cause, as being testimony incompetent so far as the complainant Starkweather is concerned, he not being a party thereto, or in any way bound by the proceedings therein, or the report of the auditor therein.

A. We had, of course, distributed some of the money before that report was made, but the report shows what disposition we had made of it.

Q. I notice two items in the report of the auditor in that case, one a deposit from George E. Ricker of one thousand dollars, and the other, amount received from purchaser subsequently for postponements of sale on two occasions, amounting to six hundred dollars; will you kindly state what these items represents? A. The two items of three hundred dollars each were paid, according to my

recollection, by Mr. Starkweather, as set forth in the answer  
249 of Mr. Duvall and myself in the Ricker case. Ricker assigned  
his purchase to Starkweather, and we had re-advertised the  
property for sale, and Mr. Starkweather wanted a longer time to com-  
ply with the terms of the sale, and upon his paying to us, upon the  
first occasion, three hundred dollars to cover expenses of advertising  
and interest, we adjourned the re-sale for a given length of time,  
and then when the time of postponement came, he made application  
again for delay on the ground that he had not had time to complete  
the sale, but that he thought he would be able to do so, and we  
again adjourned it for some days—I do not remember how long—  
on his paying another sum of three hundred dollars to us in the  
same way, but when the time came around for the sale again,  
Ricker obtained the injunction, as I have stated hereinbefore.

MR. FORREST: I object to any testimony of the witness as to any  
alleged assignment by Ricker to the complainant Starkweather, as  
such assignment could only be made in writing, under the statute,  
and that is the best evidence.

WITNESS: My recollection is that Mr. Starkweather exhibited  
that assignment from Ricker to him, but never delivered it to us.  
If it was ever in our possession, I do not know where it is now, I am  
sure; I have never seen it since the injunction was granted.

Q. I wish you would state whether, at the time of the first sale in  
November, 1897, the interest on the notes secured by the deed of  
trust was overdue?

MR. FORREST: That is objected to unless the witness has personal  
knowledge of the fact.

250 A. That was our information from the holder of the note,  
and I also had several conversations with Mr. Starkweather  
during the time of the pendency of the sale, in which he also stated  
that the interest was in arrears.

MR. FORREST: To so much of the answer as states the information  
of the witness from other sources than that of the complainant, ob-  
jection is made on the ground that the same is hearsay and incom-  
petent; and to so much of the answer of the witness as states that he  
understood from conversations with the complainant Starkweather  
as to the interest being overdue, objection is made on the ground  
that the same occurred prior to the first advertisement of sale.

Q. What is your recollection as to whether Mr. Starkweather was  
present at the second sale? A. My recollection is that he was there;  
I am positive he was there.

MR. DONALDSON: I think that is all.

## Cross-examination.

By Mr. FORREST:

Q. Prior to the first sale of this property, you knew Herbert W. T. Jenner, either personally or by sight, did you not? A. No; my recollection is that I met Mr. Jenner for the first time, to even know who he was, on the day of the first sale, on the 13th of November, 1897.

Q. He was present then? A. That is my recollection. My recollection is that I met him on the ground there at the sale.

251 Q. Were you introduced to him, or simply recognize him from a subsequent introduction? A. I do not remember; I simply know that I saw him there. Whether I learned on that day that his name was Jenner, or subsequently, I do not remember.

Q. Now, upon the subsequent occasions of sale, or attempted sale, of the property, do you recall whether Mr. Jenner was present? A. My recollection is that Mr. Jenner was present on every occasion. My recollection is that Mr. Duvall and I went to the place on two or three occasions to make the adjournments of sale. I would not be positive that Mr. Jenner was there on the occasions when we simply adjourned the sale, but I am certain he was there on the 13th of November, when the sale was made to Ricker, and I am certain he was there on the day when we sold it and he became the purchaser.

Q. Now, the day that the property was knocked down to him was in January, 1898, was it not? A. I do not remember the date; I think it must have been in February, sometime.

Q. At the time of the sale, whether in January, or February, 1898, do you recall how many bidders there were? A. No, I do not remember whether there were more than two; my impression is there were three, or four, or five, possibly. The bidding was quite spirited between some of the parties that were there, I know.

Q. Do you remember the highest bid that was made at that sale?

A. Well, the highest bid was Jenner's, when it was knocked  
252 off to him. It was cried, I remember, sometime on his bid.

We had previously sold it for \$24,100, a price which Mr. Duvall and I concurred in thinking a very fine one, and for that reason we tried to hold on and give all possible time for the consummation of it, and when we were reselling, the last bid that was made by Jenner, or in his behalf—I don't know whether he made it himself or not—it was held and cried for ten or fifteen minutes before we concluded to let it go, hoping that somebody else would bid higher.

Q. Do you recall on this day of sale that there was a bid as high as \$24,100, and that for some reason the trustees did not accept, or the purchaser was unable to comply with the demand of deposit, and there was a re-cry of the property? A. Well, now, my recollection is not distinct upon that point; that may have occurred, but I am

not clear that it did. I have some indistinct recollection about it but not sufficiently distinct to say that it did occur.

Q. Well, let us see if I can, in any way, refresh your recollection about that. Do you recall that the bids went up as high as \$24,00-, or in that neighborhood, and that a bid was made there by Mr. Starkweather, or some one in his behalf, and that the property was knocked down to the person making that bid; and that in lieu of a cash deposit, an offer was made of some security for the deposit required by the terms of sale, and that the trustees were unwilling to accept that, and that the property was re-cried? A. Well, 253 your recital of those facts in that question seems a little familiar to me, but at the same time I cannot say that I recall it well enough to state it as a fact.

Q. Who was the auctioneer at that sale? A. Charles C. Dunkinson.

Q. Did he conduct the crying of the sale personally? A. Yes, personally on each occasion.

Q. And he, I believe, is now confined at the Government Hospital for the Insane? A. Yes.

Q. Do you recall at all that Mr. Starkweather, or someone in his interest, bid at that particular sale? A. Well, I would not be able to state that; either Mr. Starkweather personally bid, or someone in his interest bid, from my present recollection. The general understanding there was that Starkweather was bidding, or someone was bidding for him.

Q. This Mr. Ricker that you refer to,—do you recall whether he bid at that last sale? A. I do not; I am not certain that he was present at the last sale.

Q. You knew him personally at that time, did you not? A. I cannot say that I did. I do not remember how he looked. The only time I distinctly remember to have seen him was when the property was knocked down to him.

Q. Are you positive now that you saw him at any time, at any sale, when he made any bid personally, or might you be mistaken 254 in that? A. I am not. I think the man who did the bidding when the first sale was made was not Ricker, but was a man by the name of Collins,—some such name. Both were strangers to me, both by sight and name; I did not know anything about them.

Q. Do you recall, independently, any other amount that was paid, either by Ricker or by Mr. Starkweather, in the interim between the first attempt to sell and the last sale as made to Jenner. A. You mean between the sale that was knocked off to Ricker and the one that was knocked off to Jenner? There was paid a thousand dollars at the time it was knocked off to Ricker,—whoever did the bidding the receipt ran to Ricker; then between that and the sale to Jenner there was this six hundred dollars paid by Mr. Starkweather, according to my recollection, three hundred dollars on two separate

occasions, for the purpose of obtaining a delay of the re-sale of the property.

Q. Do you recall now what disposition was made of the sixteen hundred dollars? A. Why, it was disbursed in accordance with the deed of trust. I cannot tell now from recollection what particular person it went to, but the auditor's report shows.

Q. I just asked you if you had any independent recollection? A. No, I have no independent recollection.

Q. Do you know John O. Johnson? A. Yes.

Q. Do you recall whether he was present at the time of the  
255 knock-down of the property to Jenner? A. I am not positive, but my best recollection is that he was.

Q. How as to John D. Croissant? A. I have an impression that I saw Croissant there on some occasion, but I am not positive of that. Croissant is the only one of the three persons you have mentioned, that is, Mr. Jenner, Mr. Johnson and Mr. Croissant—Croissant is the only one that, at that time, I knew well. Johnson was a comparative stranger, and Jenner I did not know at all.

Mr. FORREST: That is all, I believe.

Redirect examination.

By Mr. DONALDSON:

Q. Have you knowledge of the present condition of John D. Croissant, and if so, please state what that condition is? A. Yes; he is insane; you and I conducted proceedings a short time ago, in court, by which he was declared insane.

Mr. DONALDSON: That is all.

CHARLES C. COLE.

Subscribed to before me this 3rd day of May, A. D., 1904.

P. H. MARSHALL,

*Examiner in Chancery.*

Whereupon ANDREW B. DUVALL, one of the defendants herein and  
256 a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. DONALDSON:

Q. You are the same Andrew B. Duvall who is named as one of the defendants in this cause? A. Yes.

Q. And you were a co-trustee with the defendant Charles C. Cole in a deed of trust from George B. Starkweather and wife to secure Thomas H. Gaither? A. I was.

Q. Was there one or more sales under that deed of trust? A. There were two sales, as has been substantially recited by Judge Cole.

The first sale not having been completed by the purchaser, there was a resale.

Q. Will you state the circumstances, as you remember them, under which these sales took place? A. The holder of the note was Thomas H. Gaither, of Baltimore. He was represented here by Bradley Davidson. An order for sale, in writing, was presented to the trustees, Charles C. Cole and myself, and the property was advertised for sale under that order.

Mr. FORREST: I call for the production of that order.

Mr. DONALDSON: Mr. Duvall, will you kindly look in your papers, and if you have that order, produce it?

A. I will.

WITNESS: The sale was not consummated, as has been recited  
257 by Judge Cole, and the details of it are set forth in the answers which have been offered in evidence, and these answers correctly set forth, as I now recollect, the facts in connection therewith. At the second sale, supplementing Judge Cole's statement in reference to that, there were several bidders. Mr. Wright, W. W. Wright, Jr., the attorney for Mrs. Hubbard, who held the trust, after our trust, was present; he was present at both sales, and he bid. The property was knocked down at that second sale at some in excess of the amount for which it was finally sold; knocked down to a man whose name—I do not know the man; his name was Silver I find from consulting the record, and when he was called upon to comply with the terms of sale he was unable to do so, but he offered the trustees some kind of a bond—I mean stock or something of that sort. What it was I do not recall, but it was not money of the realm, and we were not familiar with its value, and had no authority to take such in exchange for the property. The property was immediately recried, and to sold to Mr. Jenner. The disposition of the proceeds of sale appears in the auditor's report in the case of Hubbard *vs.* Duvall and others.

Mr. FORREST: To so much of the testimony of the witnesses as states that he substantially adopts the testimony of the witness Cole, objection is made on the ground that it is not the proper method of testifying. Objection is also made to the statements of the witness that he "supplements" the testimony of the witness Cole by stating certain facts, upon the same ground. Objection is also made to a reference by the witness to the proceedings in what is known as the Hubbard case, on the ground that Starkweather is not a party to said  
258 cause, or in any way bound by the record or proceedings therein, nor is such testimony competent so far as he is concerned, as affecting his interest as a complainant herein.

Mr. DONALDSON: I understood you to say, Mr. Duvall that after you declined to take this stock that was offered you by the purchaser, that the property was immediately recried? A. It was.

Q. Do you know whether any bidders left between the time when

when you declined to take the stock and the auctioneer re-cried the property? A. None that I recall. It did not consume more than two or three minutes. I am confident that no one left.

Q. After the property was knocked down to Ricker at the first sale, did you have any conversation with him with regard to complying with the terms of that sale, and if so, state what that was?

A. I went to see Ricker myself and served a written notice on him that appears in the files in the Hubbard case, dated November 29th, 1897, signed by the trustees on November 29th, 1897. I served the original of that notice on George E. Ricker in his office, in the Ohio National Bank building, as appears by my endorsement on this exhibit, one in the auditor's report in the Hubbard case.

Mr. FORREST: Objection is made to a reference by the witness to the paper referred to, or its contents, on the ground that the same is incompetent so far as the complainant Starkweather is concerned.

Q. Mr. Duvall, did Mr. Ricker make any statement to you 259 in that connection as to whom he acted for when he bid at the first sale?

Mr. FORREST: Objection is made to that question on the ground that it is an incompetent method of attempting to prove an agency by the agent himself, and as the statements of such persons are hearsay, objection is also made on that ground.

A. Mr. Ricker, according to my recollection, was not present at the first sale. The bid was by a man named Collins, and the bid was made and the sale made in the name of Ricker. I saw Ricker and he told me that he was representing Starkweather.

Mr. FORREST: Objection is made to the answer on the same grounds as stated to the question.

Q. After you had that talk with Ricker, did you have any talk with Starkweather in which he said for whom Ricker was acting?

Mr. FORREST: Objected to as leading and suggesting.

A. I saw Mr. Starkweather several times after that and during the progress of the effort to sell this property, and I understood from him—he told me; I could not give you his exact words—that the Ricker purchase was his purchase.

Q. I ask you in whose handwriting the names Andrew B. Duvall and Charles C. Cole, trustees, and the other memoranda at the top of this notice, is? A. That is in my handwriting?

Q. Made when? A. Made on the day of its date, given in it; and that paper itself is a carbon copy of the notice that was served on Mr. Ricker, and was signed by myself and Judge Cole, 260 personally, and served on Mr. Ricker.

Mr. DONALDSON: I offer in evidence this paper, and ask the examiner to mark it for identification, and request the examiner to

copy it into the record and return the original to us, and we agree to produce it at any time.

NOTE.—The same was marked for identification, by the examiner, as follows:

HERBERT W. T. JENNER ET AL. } Equity. No. 20205.  
*vs.*  
 GEORGE B. STARKWEATHER ET AL. }

Marked for identification, April 19, 1904.

P. H. MARSHALL, *Examiner.*"

A copy of said exhibit follows upon the next succeeding page of this testimony, marked "Defendants' Exhibit, P. H. M. No. 4.

261 Mr. FORREST: Objection is made on the ground that it is incompetent.

Q. I hand you the bill of complainant filed by George E. Ricker against Charles C. Cole and Andrew B. Duvall, being equity cause No. 18969, which appears to have been filed January 26th, 1898, and ask you whether this conversation with Ricker and this conversation with Starkweather, which you have testified to, took place prior to the filing of that bill?

Mr. FORREST: Objected to as leading and suggesting.

A. They did.

Q. I notice an item of six hundred dollars included in the report of the auditor in the Hubbard case; I wish you would state what that represents and where it came from?

MR. FORREST: That is objected to as immaterial and irrelevant to the issues pending and incompetent so far as the complainant Starkweather is concerned, he not being a party thereto.

A. That represents two sums of three hundred dollars each, which had been paid to the trustees for the purpose of postponing the sale on two occasions.

Mr. FORREST: The answer is objected to as incompetent, the best evidence being the report of the auditor in the cause referred to.

Q. Do you remember whether these sums were paid by Starkweather? A. They were paid by Starkweather.

262 Q. Have you any knowledge of what was the condition of the interest on the note before the first sale in November?

A. From the statements of the holder of the note, and at different times the statements of Starkweather, and everybody else who was interested, so far as I knew, that is to say, there was default in the payment of the interest.

Mr. FORREST: The answer of the witness is objected to as con-



taining hearsay statements, not based upon any personal knowledge of the witness, and therefore incompetent.

Q. I wish you would state, Mr. Duvall, whether there was any understanding between the trustees under the deed of trust and anybody else, with reference to having a sale of this property except on order from the holder of the note.

Mr. FORREST: That question is objected to as assuming that there was any order from the holder of the note, there being as yet no proof of that fact.

A. There was no such understanding; the trustees acted upon the requirement of the holder of the note.

Mr. FORREST: That answer is objected to as not a fact, but the evident conclusion of the witness.

Q. Did you have any understanding with Herbert W. T. Jenner, or John O. Johnson, or John D. Croissant, or any other member of that syndicate, with reference to having a sale of that property?

A. None whatever.

Mr. DONALDSON: That is all.

263 Cross-examination.

By Mr. FORREST:

Q. You say that this conversation that you had with Starkweather and Ricker in reference to the re-purchase, or attempted purchase, at the sale of this property, was held prior to the filing of the Ricker suit? A. Yes, sir.

Q. Why is it, in your answer, you never alleged that Starkweather was the real purchaser of the property, and not Ricker? A. Ricker was the purchaser at the sale. Upon the examination of the answer of the trustees, at page 4, I find this: "On the said 8th day of December, 1897, the hereinbefore mentioned George B. Starkweather called upon these defendants and requested a postponement of the said sale representing that the complainant, George E. Ricker, had purchased the said land and premises at the sale of November 13th, 1897, for him and that he had been unable to raise the balance of the cash payment required by the terms of sale although he had used every possible effort so to do; that it would be a great hardship to him to have the property re-sold and his deposit of a thousand dollars forfeited, and that the holder of the note secured by the said deed of trust was satisfied to postpone if these defendants, as trustees, were willing so to do; in view of the representations made by the said Starkweather and upon his exhibition to these defendants of an assignment of the purchase by the said Ricker written upon the back of the receipt given him by the auctioneer, a copy of which is set out in the complainants' bill, these defendants acting in their judgment for the best interests of all the

parties interested in the said land and not because of the said  
 264 outstanding tax titles, a quit claim for which had already  
 then been executed, upon the payment by the said Stark-  
 weather to them of three hundred dollars by way of indemnity for  
 the costs of advertising and accruing interest, at his urgent solici-  
 tation, postponed the said sale."

MR. FORREST: To so much of the answer of the witness as incor-  
 porates at length the statements of his answer in the equity suit,  
 objection is made on the ground that it is not a proper way to tes-  
 tify in answer to my question.

WITNESS: What I read from the answer correctly sets forth the  
 facts, as I now recall them, and as they were then fresh in my mind.

Q. And after Ricker had made an attempt to purchase this prop-  
 erty, whether by himself or on behalf of Starkweather, negotia-  
 tions were entered into between the trustees and Jenner, looking to  
 the acquisition of these outstanding tax titles, were they not? A.  
 We understood that the outstanding tax titles would not be in the  
 way of any sale, and we so understood it when the property was  
 first advertised for sale.

Q. Is that the only answer you can give to my question, as to  
 whether you entered into negotiations with Jenner to acquire these  
 outstanding tax titles, or the removal of these tax deeds as a cloud  
 upon the property? A. My answer is, as I recall it, that we knew  
 that the property had been sold for taxes when we first offered it  
 for sale, and we knew that we could get in the tax title. That was  
 a continuous knowledge, and did not necessarily involve nego-  
 265 tiations, as I understand your question.

Q. Did not the trustees negotiate with Jenner for the pur-  
 pose of acquiring the outstanding tax titles, or attempting to acquire  
 the tax deeds on this property? A. We negotiated in the sense  
 that we made some arrangements by which the tax titles were to be  
 taken up; they would not be in the way of perfecting any sale  
 made under the deed of trust.

Q. Why were negotiations entered into with Jenner, then; in  
 other words, what object had you in view in negotiating with him  
 at all? A. Jenner was the holder of the tax title; in order to get  
 the tax title out of the way you would have to negotiate with and  
 make some arrangement with the holder of the tax title.

Q. Then some arrangement was made with Jenner? A. I have  
 so said.

Q. Then there was a reason for getting rid of these outstanding  
 tax titles, in order to give a good title to the property? A. There  
 was no further reason than to pay up the taxes, or dispose of any  
 other lien or claim that might be upon the property.

Q. Payment of taxes simply, would not clear up outstanding  
 liens, would it? A. I spoke of the payment of taxes as the pay-  
 ment of a claim against the property. These tax titles were of no  
 validity, in our judgment; they did not disturb us.

Q. Whether they disturbed you or not, there were these  
266 negotiations to get rid of them? A. I have already answered  
that question.

Q. Well, how have you answered it? A. As I have already  
stated to you.

Q. Now, do you recall how these negotiations commenced with  
respect to these outstanding tax titles? In other words, did you ap-  
proach Jenner for the purpose of getting rid of them, or did he call  
to see you? A. I am unable to tell you.

Q. Do you recall how you knew of the existence of these outstand-  
ing tax titles, or deeds? A. Not distinctly, unless from Bradley  
Davidson. He was the agent and relation of Thomas H. Gaither—  
or it may have been from Mr. Jenner.

Q. You were present when Judge Cole gave his testimony, Mr.  
Duvall? A. I was.

Q. Now, at this sale, when the property was knocked down to  
Jenner, do you recall the fact that prior to that, and of course on  
the same day, a bid had been made for \$24,100, either by Mr. Stark-  
weather or some one else, for this property? A. Yes; refreshing  
my recollection from the record, the bid was for \$24,500.

Q. And was that the highest bid? A. That was the highest bid.

Q. And prior to the bid of \$24,500, what was the next highest  
bid? A. I am unable to recall.

Q. Do you know what was the highest bid before it reached  
\$24,500, that Mr. Jenner made for this property? A. I have no  
knowledge; I do not know.

267 Q. Can you tell us why it was that this property was  
knocked, by the trustees, down to the next highest bidder,  
when a bid for \$24,500 was the highest you got? A. When the  
property was knocked down to Silver, if that was his name, he failed  
to comply with the terms of sale, and immediately the auctioneer,  
at the instance of the trustees re-cried the property.

Q. Why wasn't it sold, then, to the next highest bidder to \$24,500,  
instead of re-crying the property? A. I did not know who the next  
highest bidder was.

Q. Did you make inquiry of the auctioneer? A. At the time,  
the auctioneer attempted to get the highest price for the property?

Q. Well, who else, if you recall, was bidding for the property be-  
sides Starkweather and Jenner? A. Wright.

Q. Wright: And can you recall anyone else? A. I do not recall  
others.

Q. Now, can you recall that Wright did not make any bid before  
it reached \$24,500 higher than \$17,100? A. I have no recollection  
on the subject.

Q. Now, as a matter of fact, if you can so state it, don't you know  
that Starkweather bid up to \$24,500, and that Jenner's highest bid  
was \$24,000? A. I have no such recollection.

Q. You knew that Jenner was bidding for that property at that

sale, did you not, prior to the time it was knocked down to  
 268 Starkweather, or some one in his interest? A. I do not  
 know that I was aware that Jenner actually bid. Jenner  
 was there, and I knew he was interested in the property.

Q. After the bidder at \$24,500 failed to qualify by making the  
 required deposit, did the trustees inquire of the auctioneer who was  
 the next highest, so as to have him take his bid? A. I do not  
 recall. It is very probable.

Q. Do you know why it was not sold to the next highest bidder,  
 and his bid accepted? A. I do not recall, unless there was no  
 next highest bidder.

Q. You don't mean to say that Mr. Starkweather, or whoever bid  
 in his interest, bid it up to \$24,500 with no opposition, do you? A.  
 I am entirely unable to tell you the details of that auction sale. I  
 never was able yet to determine who was bidding at an auction  
 sale made by me with a good auctioneer.

Q. And you say, as to the details of that sale you have no particu-  
 lar recollection? A. Not any more than I have told you.

Q. Do you recall whether in the bidding among the different  
 bidders, there was such a difference in bidding as, say, twenty-two  
 to twenty-five thousand dollars, or whether the rise in bidding was  
 gradual? A. I can only give my impression; I should say it was  
 gradual. There was nothing about this sale, Mr. Forrest, of an ex-  
 ceptional character, to impress itself upon my mind. There was a  
 defaulting purchaser, and the trustees immediately required  
 269 the property to be re-cried.

Q. Do you recall that on the re-crying there was but one  
 bid, or can you recall that there was more than one bid? A. I do  
 not recall; I cannot recall it at this length of time.

Q. Now, after as you testified, the failure of this bidder to  
 qualify—this bidder for \$24,500—were there any conferences or  
 consultations between the trustees and the auctioneer, or any other  
 persons there, before the sale was re-cried? A. None except between  
 the trustees and the auctioneer, and the bidder Silver.

Q. You don't recall anyone else taking part in any such confer-  
 ences or consultations? A. Unless it was Mr. Starkweather.

Q. Was Mr. Johnson, one of the trustees of the syndicate, there,  
 and did he take part? A. He did not.

Q. Did Mr. Croissant? A. He did not.

Q. How do you recall, particularly, that these two did not, they  
 being the trustees of the syndicate? A. I recall it just like any-  
 thing else.

Q. Then you can state as a positive fact that neither Johnson nor  
 Croissant took part in any conversation between the auctioneer and  
 the trustees? A. I can.

Q. Why do you recall that with such positiveness? A. Because  
 I recall it.

270 Q. Was there anything that made any impression upon  
 you in relation to that? A. If there had been any conver-

sation between the gentlemen you have mentioned and the trustees upon the subject I would have recalled it; it would have been unusual.

Q. What was the conference about? A. We had no conference with them; there was a talk between the trustees and the auctioneer.

Q. What was that about? A. In reference to re-crying the property.

Q. Did you ask him who was the next highest bidder to the non-qualifying bidder? A. I have already answered that question, that I cannot recall such a specific request, but this question doubtless was asked.

Q. Do you know whether there is any custom or rule in this District with respect to sales by trustees, as to knocking the property down to the next highest bidder when the highest bidder fails to qualify.

Mr. LEIGHTON: We object to that. It is a matter of law, if there be such custom. No custom could control the law which controls auctions.

A. I know of no such custom. We tried, through our auctioneer, immediately, to secure the largest price for the property by re-crying the sale. As to what the exact language of the auctioneer was I, of course, am unable to tell you at this length of time.

Mr. FORREST: Nothing further, I believe, Mr. Duvall.

A. B. DUVALL.

271 Subscribed before me this 27th day of April, A. D. 1904.

P. H. MARSHALL,  
*Examiner in Chancery.*

NOTE.—At this point an adjournment was taken until Wednesday, April 20, 1904, at 11 o'clock, a. m.

P. H. MARSHALL,  
*Examiner in Chancery.*

272 DEFENDANTS' EXHIBIT P. M. No. 1.

Copy.

H. W. T. Jenner, Esq.

DEAR SIR: If you will but view my proposition of this afternoon from my standpoint a moment you will see how reasonable and mutually advantageous it is.

Over ten years ago I abandoned the northwest as a field of labor and have since centered my efforts in the southeast. Every piece of ground has been bought by me for a special purpose. The details of my plans I have divulged to no one. Forest Lake cemetery is the most tangible materialization today.

During the past summer I lost three tracts of land aggregating 150 acres and this loss seriously mars my plans. They have not yet passed beyond my reach wholly. Another tract of land I have sought to buy for over two years so essential is it to my plans. A friend of mine has held my deposit for weeks and I have daily expected him to report the transaction closed. This bears an important relation to the cemetery enterprise as well as one or two other matters or projects of which of yet I have not even hinted. Two months ago I contracted to sell a property of mine in the far South for \$10,000 cash—the papers of which are in escrow with one of our trust companies. The fever quarantine has delayed the inspection of the property or I might not now see it in my interest to make you the exceedingly liberal offer I did.

I need \$14,000 spot cash for which I will deed you or cause to be deeded you in fee the 59 acre tract which has already cost me \$15,000 in hard cash. Also a nine acre tract for which I recently

273 paid \$2,000 assuming an \$800 trust which runs for years. Also an adjoining 40 acre tract which has cost me about \$4000, during the past ten years. Also 10 acres more adjacent which has cost me about \$4000 more but which is worth many times that for special reasons.

Thus for the favor of \$14000, I deed you 150 acres of land which has cost me \$25000 and which I would not lose for three times that.

My hold on this land will be by means of an agreement or option within a given period probably five years with interest. Your four certificates I would take at par \$2500 each recognizing of course that your figure of 25 cts. is about their true value.

The cemetery has cost me over \$100,000 already and its prospects are so bright that I would not part with my interest for twice that. Besides a good salary I draw interest on about \$50,000 of its bonds. The enclosed printed list shows some of my friends and backers in this enterprise. I refer to much of this in view of your saying that I never paid for anything. If so where did I get my money. My bank book shows that I have had some \$50,000 to my credit during the past two years but I do not like my affairs made public.

Endorsement on margin.

Rec'd Nov. 19, 1897.

274

DEFENDANTS' EXHIBIT—P. H. M., No. 4.

MONDAY, Nov. 29, 1897—10:30 a. m.

Served original of this notice on Geo. E. Ricker in his office, Ohio Nat'l Bank bldg.

A. B. DUVALLE.

WASHINGTON, D. C., November 29, 1897.

Mr. George E. Ricker.

DEAR SIR: As trustees under a deed of trust duly recorded in Liber 1365, folio 248 *et seq.*, one of the land records of the District of

Columbia, we sold to you at public auction on November 13, 1897, for \$24,100, the land in said deed mentioned, being parts of "Pads-worth," "Pleasant Plains" and "Holmead" tracts, and you made a deposit of \$1,000 at the time of said sale. The terms of the sale were required to be fully complied with in ten days from the day of sale, otherwise, we reserved the right to re-sell the property at the risk and cost of the defaulting purchaser after five days advertisement of such re-sale in the Evening Star newspaper published in the city of Washington, D. C.

The time for your compliance with the terms of said sale has fully passed, and you have wholly failed to make such compliance.

We stand ready to make a good title to you as purchaser at said sale.

You are hereby notified that unless you make full compliance with the terms of sale in accordance with the advertisement thereof, a copy of which is attached hereto, on or before Wednesday, 275 December 1st., 1897, at 12 o'clock noon, we shall proceed to resell the property at your risk and cost as provided in said advertisement of sale.

ANDREW B. DUVALL,  
CHAS. C. COLE, *Trustees*.

275½ Court of Appeals of the District of Columbia, — Term.

GEORGE B. STARKWEATHER, Appellant,

*vs.*

HERBERT W. T. JENNER, JOHN D. CROISSANT, JOHN O. } No. —  
Johnson, Andrew B. Duvall, and Charles C. Cole. }

Appeal from the Supreme of the District of Columbia.

Volume II.

276 *Rebuttal Testimony of Complainants.*

Filed June 29, 1904.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER }

*vs.*

JOHN O. JOHNSON ET AL. }

In Equity. No. 20205.

WASHINGTON, D. C., May 2, 1904—10 o'clock a. m.

Met pursuant to notice.

Present: The complainant; Mr. Forrest of counsel for the complainant; the defendant Jenner; no one appeared for the defendants.

MR. FORREST: It is now 25 minutes past ten, and no one appearing as counsel for the defendants, I ask the examiner to note an adjournment until Wednesday next, May 4, 1904, at 10 o'clock a. m.

Thereupon, an adjournment was taken until Wednesday, May 2, 1904, at 10 o'clock a. m., to meet at the same place.

JNO. E. McNALLY,  
*Examiner in Chancery.*

WASHINGTON, D. C., WEDNESDAY, May 4, 1904—  
10 o'clock a. m.

Met pursuant to adjournment.

Present: Mr. Forrest, of counsel for complainant; Messrs. Leighton and Donaldson, of solicitors for defendants.

277 Whereupon GEORGE B. STARKWEATHER, the complainant and a witness in his own behalf was produced in rebuttal and testified as follows:

Direct examination by Mr. FORREST:

Question: During November and December of 1897 and January of 1898, where were you, Mr. Starkweather? Answer. I was in the city of New York most of the time. I made several trips there from Washington.

Q. And how much of that time, do you recall, were you present in the city of Washington? A. Of those twelve weeks, I don't think I was in Washington more than two or three weeks.

Q. There has been introduced in evidence in this case the papers and proceedings in equity cause No. 18,969, George E. Ricker vs. Charles C. Cole and others. What knowledge, if any, had you of the institution of that suit? A. They came to me as an entire surprise the other day when presented by the defendants. I find no evidence of any knowledge that I ever had of that suit—can recall nothing.

Q. Prior to its institution, were you advised that such a suit was to be brought by Mr. Ricker or any one else? A. I have no recollection of it, and my recollection is generally very good.

Q. And when was it that you first knew that such a suit had been instituted? A. As I say, the other day here, when pre-  
278 sented by the defendants.

Q. There was introduced in evidence by Mr. Jenner a sheet of paper written by you and unsigned. How did Mr. Jenner get possession of that paper, and under what circumstances? A. I had been in the habit for several years of going to Mr. Jenner's office with propositions of one kind and another. I called one day, I think it was November 19, 1897, with quite a large proposition to make and he did not seem to grasp it clearly; there was so much of it in fact, that I went out and drafted it just as it appears on that exhibit. That was not for him, but for myself, to state my proposition clearly and unmistakably. I never write a letter to a person in pencil; never fail to date, and never fail to sign a letter. This was in pencil, undated and unsigned.



Q. Where was it written? A. I am not sure where it was written—in the office of some friend somewhere in this city, where I stopped in. I do not recall whose office, at this time.

Q. How late before you took that paper to Mr. Jenner's office, had you seen him? A. Earlier in the day—several hours previous.

Q. And you had a talk with him? A. I had a talk with him before I thought that the intricacies of the proposition were such that he did not grasp them. I felt that it was so favorable a proposition that he would not decline it, if he understood it.

279 Q. Now, he has produced that paper here, and I want to know how he secured possession of it? A. That paper contained facts which I had uttered to no one, but was strictly private and personal, and I would not for a large sum have let it out of my possession. Mr. Jenner asked to glance at it a moment, as if to grasp its meaning or recall some point in it; he asked to see the plat which explained—the diagram which explained the location of properties &c., and also a printed statement. He took them, and I at once asked for their return. He clutched them and refused to return them. If it were not against my principles to commit a breach of the peace and strike a man, I should have knocked him down and recovered my property. Had I not been about to leave for New York, I should have instituted legal proceedings to recover those papers.

Q. Did he, at that time, give any reason for refusing to return the papers? A. None whatever. I entertain ill will towards no human being, it is contrary to my nature. My reason for discontinuing my calls at his office was that previously he had dictated terms to me, giving me the option of accepting or rejecting them. When I found that my personal efforts were not safe when taken to his office, I prudently abstained from ever going there again.

Q. Now, prior to his getting possession of the paper in the way that you have stated, had its contents been read over to him? A. They had been read over by me. I never intended to let it go out of my possession unless a deal was effected. It was a memo-  
280 randa of a proposition that I was making to him.

Q. There has also been produced by him a plat and a printed list of names. How did he get possession of those papers? A. Those were seized at the same time, part and parcel of the same proposition.

Q. And was any demand made by you for their return by him? A. There was, most emphatic and repeated demands for one and all of them.

Q. He has testified, in answer to the question put to him on cross examination, as follows: "Did he ask you for it after you got possession of it?" and he answered, "He asked me for it the next day following the day he left it with me." What have you to say to that? A. It was there and then, at the same time, and not the next day.

Q. And to this further question:—"He did not ask you for it on

the day you got possession of it? Answer. He did not ask for it on the day he handed it to me." What have you to say to that? A. I repeat that it was the same day; I only handed it to him for a moment.

Q. What have you to say to his answer, that you did not ask for it on the day that he got possession of it? A. I contradict it. I insist that it was only for a moment—I only thought that it was a moment that he wanted to glance at it.

Q. This further question was asked him in reference to 281 that:—"Did you tell him that you refused to return it to him?" and he answered, "I think I told him I wanted to keep it as a memento of the transaction." What have you to say to that? A. He gave no reason or explanation for keeping it.

Q. Did you see him the next day in reference to this paper? A. I did not see him at all; I went to New York at once.

Q. While he had this paper in his possession and in your presence, did Mr. Jenner read it over? A. He did not; I had read it to him.

Q. But I mean after he got possession of it, did he read it over? A. I say, he did not that I saw; that is why I asked its return.

Q. In answer to the following question:—"Tell me what in that paper indicated in any way an effort on his part (meaning your part) to obtain money from you by misrepresentations or frauds?" and he answered, "In one place in this paper Mr. Starkweather says 'I need fourteen thousand dollars spot cash for which I will deed you, or cause to be deeded to you, in fee,' then follows a schedule of certain property which he alleges he is able to deed to me. Then he goes on to say, 'Thus for the favor of \$14,000 I deed you 150 acres of land.'" I show you this paper, ask you to read it over and tell me whether or no the statement contained in the paragraph beginning with "I need \$14,000 spot cash,"—what statement, if any, in that paragraph was a fraud or misrepresentation of any fact therein stated?

282 Mr. DONALDSON: We object to that because the contents of the paper itself is the best evidence of what it contains, and as calling for the conclusions of the witness in that behalf.

A. (After examining.) I find it is a correct statement. Several lump sums are mentioned as, \$2,000, \$4,000, etc., which, of course, are approximations, a few dollars more or less. But of the truth—the substantial truth, of all this I can produce record evidence. I have with me over one hundred vouchers, cancelled checks, &c., and can produce from the recorder of deeds and from various sources all the evidence which my counsel might direct, in absolute substantiation of the truthfulness of all that I said. I said it at the time, with the hope and expectation of being called upon to verify it that very week. Had I been on my dying bed, I could not have spoken with more fidelity.

Q. Now, you may state whether or not that statement of yours, as

to the truthfulness of the statement contained in that one paragraph, applies to the contents of that whole paper? A. Absolutely.

Q. Again, Mr. Jenner testified that, "Prior to Mr. Starkweather handing me that paper he had obtained considerable sums of money from me upon fraudulent misrepresentations." What have you to say to that statement? A. It is news to me. I never yet have intentionally misrepresented anything in any transaction with any human being.

Q. Well, is that statement true or false? A. Absolutely false.

283 Q. He further says in his testimony, that you finally sold him two shares of stock upon the false misrepresentation that the Crescent Heights Syndicate property could be released from the blanket trust now owned by Mrs. Hubbard, of Hartford, for the sum of \$5,000. What have you to say to that statement? A. The placing of the blanket trust on any Washington property was a voluntary, unsolicited act on my part, and a surprise to the Hubbard interests—

MR. LEIGHTON: That is not responsive to the interrogatory and we move to strike it out.

A. (Continuing:) The Hubbard representative upon my judgment, agreed to release that for \$3,000; later, at the time of our sale, I said it would be more equitable at \$5,000. Early in 1901, an agreement was entered into by me with the Hubbard estate, which was placed of record here, agreeing to release any and all properties upon the payment of a reasonable pro rata. Repeatedly the Hubbard estate agreed to accept the proposition of \$5,000, upon my representations to them that the trustees were anxious to pay it. The trustees repeatedly failed after they had notified me that they could—

Q. That they could do what? A. That they could raise the \$5,000 necessary to pay the pro rata.

MR. LEIGHTON: We object to so much of that answer as not responsive, and move to strike it out.

Q. What trustees do you refer to? A. Trustees, Croissant and Johnson.

Q. Now you spoke of putting this blanket trust upon the property unsolicited. What do you mean by that?

MR. DONALDSON: Objected to as immaterial, irrelevant and  
284 not proper rebuttal testimony.

A. Mr. Hubbard had, without a shadow of security, handed me money to do with as I saw fit, and in purchasing property, he insisted that I should not put it in his name. Fearing, by some means or complications, that it might be lost to us both, I put a blanket trust upon six pieces of property into which money of his had entered.

Q. I do not know whether you categorically answered my question. And that was this, that Mr. Jenner testified that you sold him two shares of stock upon the false *misrepresentation* that the Crescent Heights Syndicate property could be released from the blanket trust note owned by Mrs. Hubbard of Hartford, upon the payment of \$5,000. Now, I want to know what you have to say about that statement; whether it is true or false, that you made that fraudulent misrepresentation? A. I made a representation that was not false. I never knew of the Hubbard estate declining to take the \$5,000. My warrant for so asserting was, that I had an agreement to that effect: I had several letters to that effect, and the further fact may be presented, that they did take the \$5,000 plus the interest from May 2nd, 1892, which was also a suggestion of mine. The Hubbard estate never failed to take my counsels on that subject, that I know of.

Q. Respecting the release of this blanket trust by the Hubbard estate, upon the payment of \$5,000, did you ever represent to Mr. Jenner that the trustees had a contract with Mrs. Hubbard  
285 to release that trust? A. I did not. I may have said that they were under an agreement to release, referring to the instrument that I have already stated.

Q. Now, this agreement to release that blanket trust upon certain property, upon the payment of a pro rata portion of the trust—where is that? A. (Referring to memoranda.) It is in Liber 1774, folio 195, and appears as exhibit in equity cause No. 17,246.

Q. Mr. Jenner has testified to making a visit to Hartford, Connecticut, and interviewing Mrs. Hubbard in relation to this matter. What, if anything, do you know about that? A. I first learned of it through Mrs. Hubbard, and later confronted Mr. Jenner with the charge that he had been there, and he blushingly admitted it. The only fruit of that visit, that I discerned, was that the Hubbard people, after that visit, treated me more as an enemy than as a friend.

Q. How had they dealt with and treated you prior to his visit there? A. We were friends from my boyhood up to the date of the visit of Croissant in July, 1892. After that date they practically ceased to answer my letters and our relations were more so strained after Jenner's visit—practically severed.

Q. Referring again to this paper—exhibit of Jenner's, the latter has stated that after he refused to return that paper to you, you got angry and then stated that you would not have sold these shares of  
stock to him, except that you knew that they were worthless.

286 What have you to say to that? A. I pronounced that statement as absolutely false, and in corroboration of my statement will say, that at the very outset, May 2, 1892, I reserved the right, as appears by the original agreement, to subscribe to 14 shares in preference to cash, as I considered them worth more than their face value. The very month that I was disposing of those two shares to Mr. Jenner, I purchased of a syndicate member certificate

No. 10 for \$2650, which is \$450 more than Mr. Jenner had compelled me to part with — my second certificate to him.

Q. What was the date of that sale or transaction? A. It was May 9, 1894.

Q. Now, in this paper, "Exhibit A," it is said by you, "your four certificates I would take at par \$2500, which recognizing of course that your figuring of 25 cents is about their true value." What did you mean by that? A. At the time of the sale, November 13, 1897, I saw the tears streaming down Mr. Jenner's face as he left the auction. I went in about the 17th of November to see what he had to say concerning the auction; I was especially interested to see if he recognized my hand in the transaction of the 13th. I asked him concerning the cost and he mournfully said that a stranger—Ricker—had taken it. I asked him what the syndicate certificates were worth and he said he thought about 25 cents a piece. So in this paper of the 19th I referred to that as his estimate of their value and credit if he would enter into the \$14,000 transaction, to take those four certificates off his hands at \$10,000, that shows  
287 my estimate of their value at that time.

Q. Mr. Jenner further testified that, on his visit to Hartford, Connecticut, Mr. Buck had stated to Mr. Jenner, that you "had never paid any interest, or, at all events, had not paid the interest on this blanket trust note, and that Mrs. Hubbard attributed the decease of her husband to the worry caused him by Mr. Starkweather." What have you to say to that statement? A. There was a specific arrangement that interest was not to be paid semi-annually on that note—

Q. An arrangement with you? A. With Mr. Hubbard. As for the death of Mr. Hubbard his health began to break before any of his money came into the District of Columbia. The destruction of the Park Central hotel in Hartford, where many human beings lost their lives kept Mr. Hubbard out one or two days, constantly in attendance, and the rapid decline of his health began from that time. He died of heart failure in January, 1890, having lived, however, several years longer than the average of his brothers and sisters.

Q. What connection, if any, had you with the sale by Mrs. Hubbard, of her interest in the Hartford Courant? A. None whatever; and I was informed by Mr. Buck that she did not dispose of that interest in the Courant.

Mr. LEIGHTON: To so much of the answer which states what Mr. Buck says is objected to, and we move to strike it out as hearsay.

Q. Mr. Jenner further testified, in that connection, that  
288 you, after Mr. Hubbard's death, as Mr. Jenner was informed by Mr. Buck, had induced the widow to part with her interest in the Hartford Courant, which was a dividend paying concern, and sunk some \$12,000 or so more of her own money into one of his real estate schemes. You did not, as I understand your last answer, induce Mrs. Hubbard to part with her interest in the Hart-

ford Courant? A. In no way, and had nothing to do with the alleged \$12,000; I never had or handled or had anything to do with them whatever.

Q. What about this statement of your having sunk some \$12,000 of Mrs. Hubbard's in to some real estate scheme of yours? A. I did nothing of the kind; had nothing to do with anything whatever, of that nature. I never sunk money in real estate.

Q. Mr. Jenner further testified that Mr. Buck told him that you had promised Mrs. Hubbard to pay interest upon this money, and that you were not doing so. What have you to say to that statement—did you ever promise Mrs. Hubbard any such thing? A. I never promised it in — way or shape, that is, in the sense of periodically paying interest. It was absolutely an impossibility from the nature of the case. That interest should be paid on all money of Mr. Hubbard, was, of course, understood; but not as periodical semi-annual interest paying.

Q. As I understand this testimony, Mr. Jenner testified that Buck told him that you had promised Mrs. Hubbard to pay interest on this \$12,000 that is claimed you sunk in some real estate scheme—is that true? A. It is not.

289 Q. Mr. Jenner, when asked whether he had had any personal difference with you, testified, that you tried to borrow a considerable sum of money from him, which he refused to loan, and you were much irritated by being unable to obtain any more money from him. What have you to say as to whether or not that was the cause of any ill will between you and Mr. Jenner? A. None, whatever, as I have already stated. It was not ill will, but circum-spection. I never knew Mr. Jenner as a patent attorney, but as a money lender—as a usurer—and I had gone to his office probably six times for every once that I ever obtained money from him at any price.

Q. Now, at this attempted sale in November, 1897—you were present, I believe, Mr. Starkweather? A. I was.

Q. Was Mr. Jenner there? A. He was.

Q. Mr. Jenner was asked this question:—"Were you a bidder at that sale?" and he answered, "I was not." What have you to say about that? A. S. Herbert Giesey was the bidder, and not Herbert W. T. Jenner.

Q. Do you know for whom Mr. Giesey bid?

Mr. LEIGHTON: The question is objected to as irrelevant and immaterial, and the answer must be in the nature of hearsay testimony.

A. I can only infer for whom Giesey was bidding, by the circumstance of their stopping to rest and conferring—Giesey, Jenner and John O. Johnson.

290 Q. Confer at what stage of the bidding? A. After about ten minutes' bidding, and the auctioneer's tongue wearied and he stopped to catch his breath and rest.

Q. Who bid in the property at that sale?

Mr. LEIGHTON: That is objected to as having been all gone into on direct examination.

A. James A. Collins made the last bid in the name of George E. Ricker.

Q. For whom was Ricker acting—for you or for himself? A. For myself.

Q. Mr. Jenner has testified that he was not consulted by you before the sale with respect of the propriety of bidding it in. If that be so, why did you not consult Mr. Jenner?

Mr. LEIGHTON: The question is objected to as immaterial and irrelevant.

A. The attitude of the trustees of the syndicate, and of its various members had been so hostile towards me for years, that I could not with self-respect approach them regarding any syndicate matter, and my last efforts in that direction failed to elicit any information and only exposed me to insults; hence, I did not feel called upon to confer with Mr. Jenner on the subject. Aside from that, I was absent in New York the first twelve days of November, 1897.

Q. At the bidding of this property in February, 1898, were you present? A. I was.

291 Q. Did you bid personally, or some one bid for you? A. Some one bid for me.

Mr. LEIGHTON: The question and answer is objected to as not brought out in direct examination, and it is not proper rebuttal.

Mr. FORREST: The solicitor for the complainant says, that this is only preliminary. (To the witness): And what was the highest bid made by you or by some one for you, at that sale?

Mr. LEIGHTON: The question is objected to for the reason above stated.

A. I know—I am positive it was over \$24,100, and think it was \$24,500. I do not feel positive of that amount.

Mr. LEIGHTON: The answer is objected to for the same reason, and we move to strike it out.

Q. What was the next highest bid, to the highest one made by you?

Mr. LEIGHTON: Same objection.

A. \$24,100.

Q. By whom was that made? A. By Herbert W. T. Jenner.

Q. I believe you have already testified the reason why your bid was not accepted? A. Yes, sir.

Q. Did the auctioneer then, if you recall, re-cry the property, knocking it down to Mr. Jenner as the next highest bidder? A. He did not.

Q. What was the first step, as you recall, done after the auction-

eer or the trustees failed to receive your bid for \$24,500?

292 A. They gathered and conferred—the leading ones—three, four or five of them.

Q. Give their names if you recall them? A. C. C. Duncanson, C. C. Cole, J. O. Johnson, and H. W. T. Jenner; I am positive of; there may be one of two others?

Q. Do you know Mr. A. B. Duvall? A. I do. He was also one of those.

Q. Did you hear what was being talked about among them? A. I did not. I was too far away.

Q. Well, after this conversation, conference, consultation, or whatever you choose to call it, was over what was done with respect to the crying of the property?

Mr. LEIGHTON: The question is objected to for the same reason.

A. The auctioneer announced that they would begin and bid it over again. The first bid was made by W. W. Wright, Jr., the representative of the Hubbard estate, who had announced before the auction began—announced to all that he was there to protect the Hubbard estate, and made a bid of \$17,000 if necessary. He did not consider it necessary until my bidder was out of the race, and the second sale was attempted.

Mr. LEIGHTON: We move to strike this answer out, as being not proper rebuttal of the matters on direct examination in regard to the witness as already testified.

Q. When was it, if you know, that Mr. Jenner first knew of the condition of the title to this property? A. On August 17, 1889, I

293 procured an abstract at that time from the Washington Title Insurance Company—a certificate rather—which confirmed what I had represented regarding the property to him.

Q. Did he see that certificate? A. He did.

Q. What became of it? A. I have it with me.

Q. I wish you would produce it?

(The certificate was here produced by the witness and handed to counsel.)

Mr. FORREST: I offer the certificate in evidence and ask the examiner to make a certified copy of it—the original of which will be produced at the hearing if necessary.

Q. Now, subsequent to the date of that certificate and down to May 2, 1892, what trusts, if any, were put upon that property? A. The one to Herbert W. T. Jenner for \$2500, that was August 17, 1889; December 2, 1889, the Hubbard blanket trust, so-called, \$14,560; in March, 1890, was what has been called "the umbrella bond lien" of \$10,000, was put on; in July, 1891 the Mindeleff trust of \$6,500 was put on, at Mr. Johnson's solicitation.

Q. Were those all? A. Those are all that I recall. I have a memoranda here to refer to if you wish.



Q. Would that refresh your recollection? A. That is all upon the seven acres. On the three acres in April, 1890, the Ashford trust for \$2817 was placed—on a portion of the three acres.

Q. And at the time of the agreement of May 2, 1892, were all those live trusts on the property? A. They were all live trusts on the property, save that they might mislead a stranger, because the blanket trust only partially rested on this property and the "umbrella trust" was more nominal than real, and I provided for that personally from first to last.

Q. When, if at all, did Mr. Jenner to your knowledge see an abstract or certificate of some title company showing the condition of the title respecting any of these trusts? A. On May 28, 1892. Mr. Croissant insisted that the trustees did not feel warranted in proceeding without an immediate abstract. On May 9, 1892 Croissant and Johnson had ordered an abstract from the Columbia Title Company, which was not received until July 19, 1892, and pending the receipt of that abstract I was directed by Mr. Croissant to obtain one, if I wished any more money on this matter—to obtain one from the Washington Title Company, which I did and delivered to them. Croissant, Johnson and Jenner had known all about these incumbrances from conversation, and repeatedly; but they wished record evidence of it, which I obtained and gave to them on May 28, 1892.

Q. What did you say became of that abstract of May 28, 1892? A. I delivered it to these people and I have never seen it since.

Q. Now, prior to the delivery of the abstract by you, in conversation with Mr. Jenner, you had told him of the incumbrances upon this property? A. Yes; I had told Mr. Jenner every month on an average; oftener than once a month for over a year, trying to effect my personal loan from him.

295 Q. At the time of the contract of May 2, 1892, Mr. Jenner knew of all these incumbrances upon this property? A. Better than I.

Mr. FORREST: I call for the production from the defendants of the abstract of title of May 29, 1892, which the witness says was turned over to the defendants.

The WITNESS: I have a receipt from the Washington Title Company showing that abstract services were given.

Mr. FORREST: I wish you would produce that receipt?

Mr. DONALDSON: We object to the production of that receipt. It only shows the delivery of that certificate to Mr. Starkweather.

(The witness here produces the receipt, and it is handed to counsel for the defendants for inspection or such examination as they see fit to make of it.)

Mr. DONALDSON: We object to any testimony in relation to these receipts as they do not tend to show what disposition Mr. Starkweather made of the certificates therein referred to, after he received them from the company, nor is there any thing there to identify this property that is mentioned in the receipt.

Q. Please indicate what portion, if any, of those receipts that you have handed me, refer to the examination of the title to the property in controversy here?

Mr. LEIGHTON: Same objection.

A. The duplicate receipt, May 28, 1892, refers wholly and exclusively to what is now known as the Crescent Heights formerly called "Tip Top," as here indicated.

296 Q. When did you get that duplicate receipt?

Mr. LEIGHTON: That answer is further objected to because several tracts are involved in what are known as the Crescent Heights, wherein one only, the seven acre tract, is involved in this controversy.

(Question not answered.)

Q. When did you get that duplicate receipt? A. July 2, 1896.

Q. And from whom? A. From the Washington Title Insurance Company.

Mr. FORREST: We offer in evidence the duplicate receipt, and ask that it may be marked as an exhibit to accompany the witness' deposition.

Mr. LEIGHTON: Same objection.

Q. When you have stated that the abstract of title that you produced, of May 28, 1892, was delivered to Mr. Jenner, was that the abstract of title referred to in that duplicate receipt? A. It was delivered to the trustees, Croissant and Johnson. It was ordered by me at their request. I have not seen it since. It is the one referred to in this duplicate receipt and dated May 28, 1892.

Q. Now, to refer to another matter for a moment. When were the syndicate certificates issued?

Mr. LEIGHTON: That question is objected to as the certificates are the best evidence.

A. In November, 1892.

Q. Prior to the issuance of the certificates, was there any paper as you recall, issued by the syndicate showing the number of shares that each person had subscribed to, outside of the subscription list? A. None whatever.

Q. Now, how long, if at all, can you say that Mr. Jenner knew of the fact that this blanket trust existed upon this property before the issuance of the syndicate certificates? A. He had had access to the abstracts of two title companies of the District of Columbia for a matter of from three to five months, and he was intensely interested in everything that related to Crescent Heights, as his intercourse manifested every time I went to his office.

Q. Well, do you mean by your answer that he had knowledge of this blanket trust from three to five months before the certificates were issued? A. He certainly did.

Q. Mr. Jenner, in his testimony says, in answer to this question:—"How many shares had you purchased in the syndicate when you ascertained about this blanket trust?" and he says "Two." What have you to say to that statement? A. His chronology is wrong.

Q. Is that statement, so far as you know, true or false? A. It is false.

Q. What knowledge, if any, have you of the steps taken by Mr. Jenner, if any, for the release of this blanket trust on the payment of \$5,000? A. Personally, I know nothing.

Q. Were you, as a member of the syndicate, consulted with reference to that matter by Mr. Jenner or any other member of  
298 the syndicate? A. In no way whatever.

Q. After the receipt of that letter, which we have offered in evidence, agreeing to release the Hubbard trust upon the payment of \$5,000, when, if at all, were you informed by the Hubbard estate that they refused to release the Hubbard blanket trust upon the payment of \$5,000? A. Never. They always expressed a willingness and Mrs. Hubbard frequently asked me when we would have that money ready for her.

Q. Mr. Jenner also testified about securing the title to certain parts of certain lots in this syndicate property, and further that after taking the title, he gave the trustees a written contract agreeing to pay them one-half of the amount that he, Jenner, should receive whenever these lots should be taken for condemnation purposes. What, if anything, do you know about any such arrangement made by Jenner? A. I know that in the equity cause No. 16,612, Mr. Jenner distinctly testified that there was no writing, no written agreement of any kind, and no exhibit as he has testified to appears in that case, to that effect,—no exhibit of such agreement.

MR. LEIGHTON: We object to that. The record itself is the best evidence as to what Mr. Jenner testified to.

Q. Had you any knowledge of any such agreement on the part of Mr. Jenner? A. I had not.

Q. When did you first know that he claimed that there was any such agreement? A. When he first testified before the examiner in equity, No. 16,612.

299 Q. Prior to the formation of this syndicate had you any conversation with Mr. Jenner about joining it? A. Not of his joining it—I did not dream of such a thing.

Q. At the time of this agreement for the purchase of this property on May 2, 1892, did the trustees, Johnson and Croissant, know of the different trusts that existed upon this property? A. Every one. Concerning every one they knew. Mr. Johnson had almost made a deal with the property a year before and was cognizant of all the trusts, and he practically put on the Mendelev trust a year before, in July, 1891. But for him that trust would never have been on.

Q. And when they agreed to pay you \$75,000 for this property, were or were not, all of the trusts then existing upon the property

taken into consideration in the purchase? A. They were. And frequently talked over the very days previous to the transaction.

Q. Mr. Jenner has testified that the amended bill filed by you in cause No. 16,612, in May, 1896, had the effect of making the syndicate certificates in this property practically worthless. What have you to say to that? A. I have proof of the fact that the syndicate holding was not held in high esteem during the summer and fall of 1892, because the colored holders had not been disposed of in any way, by purchase or otherwise. It was the hypothecating value of a share in that syndicate in the winter of 1892 and 1893 of less than \$500 per syndicate certificate. The equity suit No. 16,612 of

300 July, 1895 was, perhaps, an added misfortune to the syndicate but did not seriously affect the value of the certificates; the only obstacle being the colored holdings. In May, 1896, when my amended bill was filed, in view of the rulings of Justice Cox, which was not known to four members of the syndicate, but if so, its tendency must have been to enhance the value because it showed that there was some way out of it, it showed that there was a purchaser at least and that all money put in must be refunded also that no one would lose.

Q. I want to know Mr. Starkweather, what you have to say to his statement, that the amended bill in 16,612 filed in May, 1896, practically made these shares of stock worthless. Is that statement true or false? A. It is absolutely false and absurd on its face.

Q. After the filing of the amended bill in May, 1896, do you know of any dealings by him of transfer, assignment or loans negotiated by these certificates? A. I think I have data which will show such, but I shall have to refer to it to refresh my memory on that point.

Q. Well, if it will refresh your memory to refer to the memoranda, let us see what it is?

(The memoranda was here produced, and examined by the witness.)

A. The memoranda I have here indicates 1896, it had begun.—the affairs of the Crescent Heights syndicate were practically forgotten, so far as I could judge.

Q. You have spoken of an offer made by you to Mr. Jenner to take his four certificates at \$10,000. Was, or not, that after  
301 the filing of the amended bill of 1896? A. It was a year and a half after.

Q. Mr. Jenner has testified to acquiring, as I recall it, four certificates after May, 1896. Do you know anything about that transaction? A. I do not personally, that I recall.

Q. Mr. Jenner has produced at a hearing of this case two certificates bearing date February 11, 1893. One, the first of September, 1893, and one, the 27th day of February, 1894. Did he purchase any of those certificates from you? A. The second two mentioned, I infer are those that he obtained from me.

Q. Well, he also mentions four of the 9th of June, 1902. Did he purchase all of those from you? A. None of those.

Q. How many has he purchased from you? A. Two he exacted; they were not free sales, properly.

Q. What was the transaction? A. The first transaction—

Mr. DONALDSON: We object to any testimony in relation to this transaction.

A. (Continuing:)—was subsequent to May, 1893. I knew that I must have cash to meet an obligation in August. I therefore exchanged a syndicate certificate with him for his certificate No. 44 of the Ohio national bank stock—20 shares—at a serious discount. The second certificate that I disposed of to him was when I was owing two or three small sums, and he compounded them, compromised them, by taking a one-half interest in a certain certificate of mine, (the number of which I can give later). I borrowed of him \$100 and he took the other half of that certificate as security. When at maturity, I was in his power, and rather than take chances on a public auction or sale, I acceded to his demands to take it at his own price. The price of those two certificates was not as he testified, \$5,000, but about \$1200.

Mr. LEIGHTON: We move to strike out this answer as not relevant and not proper rebuttal.

Q. Is Mr. John O. Johnson in town? A. He bowed to me an hour ago.

Q. When we were taking testimony in this case the other day, do you recall whether you saw Mr. Johnson at Mr. Leighton's office? A. I did.

GEO. B. STARKWEATHER.

The further taking of testimony was here adjourned until Friday, May 6th, 1904, at 7:30 o'clock p. m.

JNO. E. McNALLY,  
*Examiner in Chancery.*

WASHINGTON, D. C., FRIDAY, May 6, 1904,  
7:30 o'clock, p. m.

Met pursuant to adjournment.

Present: Same counsel as before.

Whereupon GEORGE B. STARKWEATHER, the complainant, was recalled and further testified as follows:

By Mr. FORREST:

Q. Mr. Starkweather, since you were examined the other day there have been some matters about which you desired to give further testimony. Now, I want to ask you first about this Mindeleff trust that you referred to in your testimony. State

what that trust was and what it represented. A. In 1887 Mr. Mindeleff proposed joining with me in the purchase of a \$5,000 tract of land across the Eastern branch. He gradually shifted it, and an agreement was entered into by which we were to share in that. Later he went up to Glen Echo and abandoned entirely this enterprise over at the Eastern branch; and according to an agreement, which is of record as I can show; in 1888 or 1889, quit claiming the whole thing and I returned him \$525 and assumed his burdens. Later, the prospect was that the deal would yield me liberally—\$13,000 was figured up as not unreasonable. I was generous, I regret to say; I promised him if it came out that way that I would give him \$6,500, his half, the same as if he had stood by me. While things were still in uncertainty his friend J. O. Johnson, in July, 1891, coaxed me into putting that in the form of a trust on Cresecent Heights which I did, as an act of heaping coals of fire on his head.

Q. You have referred to some agreement in connection with that. Will you produce it? A. I have the original agreement at home—I can produce it. I can give the liber and folio where the agreement is only partially put upon the records. The agreement in the original purchase and transaction was recorded in Liber 1244, folio 272, March 28, 1887; our agreement regarding that was put of record in Liber 1276, folio 476, September 21, 1887. The quit claim appears of record in Liber 1488, folio 165, April 29, 1890, the consideration named therein of \$525, is the true amount.

304 Mr. LEIGHTON: We must interpose an objection to this also, as being absolutely immaterial and not the proper way to prove a record.

Mr. FORREST: The solicitor for the complainant says, that this testimony is put in for the purpose of negating the testimony of the defendant Jenner, that in all these transactions Mr. Starkweather had not shown good faith and especially with respect to these trusts of which the defendant Jenner intimates in his testimony that he had no knowledge, and that the trusts were put upon the property by Mr. Starkweather for some ulterior purpose, and not as evidence of good faith on the part of Starkweather in transactions that he had with these respective parties.

Q. Now these libers that you have referred to; do they contain, among other things, the agreement that you first referred to in your testimony respecting the Mindeleff trust? A. They refer to it but they do not give it in extenso. I can produce the original.

Mr. LEIGHTON: Same objection.

Mr. FORREST: I wish you would produce it, or either file it or a certified copy of it with the examiner, and the original will be produced at the hearing or elsewhere if required.

Q. Now this Mindeleff trust, you say was for how much money? A. It is \$6,500.

Q. And what became of that trust—in other words, how  
305 was it paid, if you know? A. It was paid by the subscriptions as they were received. I remember it distinctly, that the notes were for 18 months and at the maturity one, if not all, of the two or three of the several notes were protested, and that protest fee was charged up against me, a year or two after May 2, 1892; but they were finally paid by the trustees of the syndicate.

Q. Whatever notes, as I understand it, were protested were so protested after you had made your agreement of May 2, 1892, for the conveyance of this property. Is that so? A. It was.

Q. Now, as a matter of fact, what advantage, if any, accrued to you by the giving of this trust to Mindeleff?

Mr. LEIGHTON: Same objection.

A. None in the world. Our relations were severed, and there was no real motive whatever.

Q. And what consideration, if any, accrued to you from Mindeleff by the giving of this trust?

Mr. LEIGHTON: Same objection.

A. Absolutely none. He never had accused me of owing him or in any way stealing from him; it was an act of excessive generosity on my part, which I regret more than any other thing in my life, and yet it is in harmony with my other actions.

Q. In this transaction that you had with Mindeleff, and out of which you gave this deed of trust to secure him this sum of money, did you yourself make anything out of the transaction?

Mr. LEIGHTON: Same objection.

306 A. The original transaction referred to in the first liber that I named here, cost me \$15,000 in cash, and instead of there a \$13,000 profit (which might have been but for entanglements and complications), was an absolute loss; so I paid him a prospective profit in face of the fact that he had abandoned me and had no interest in the property. It was a loss all around; there was no possible gain. He was friendly and is the same to-day, and bows to me on the street. There was nothing more than this before or after; we have no relations—our relations began with his being my pupil in Spanish.

Q. Jenner was asked about certain of these trusts and as to whether he had any knowledge of them, and I called to his attention the trust to Mr. C. B. Rheem or Warner and Company. Did he know anything about that trust, from any financial transaction with you?

Mr. DONALDSON: Same objection.

A. He certainly knew everything regarding every transaction up there, because I had depended on him for my little obligations at one time or another; and although I had to pay very dear for all

money I got, he always wanted to know where it went and understand all about it. It was nothing new. It was in those days that the security which I had given had become worthless. The corporation had collapsed, in which I lost a great deal, and it was another act entirely voluntary on my part, giving him absolute real estate security. I will say right here, in speaking of these trusts Jenner has testified that there was an accumulation of which he

307 knew nothing—Johnson and Croissant also knew exactly the amounts—the three abstracts or certificates that were obtained did not vary one dollar from what I had told them; the aggregate, on the face of it, was for \$44,280.84. Other liens and business transactions and advances were on the order of this Mindeleff transaction, I regret to say save the Hubbard blanket trust which was a genuine act of legitimate gratitude on my part. I should have been a monster if I had not endeavored to secure Hubbard. They were all voluntary liens placed upon that property, no one asked me to do so; I did what I thought was just and generous. Of that \$44,000, \$24,000 were payable, the rest was negligible I may say; and as in the umbrella lien, it only cost me \$4,000—that act of kindness; and the blanket trust only cost \$5,000, which removed over \$49,000 of those apparent trusts.

Q. Now, with respect to this Rheam trust, that I spoke of. I want to know whether at the time that you had dealings with Mr. Jenner, in the way of loaning money, he knew that that Rheam trust existed upon this property, and if so, how did he know it? A. By my frequent calls at his office, and the accruing interest I had to provide for, and I would go there and make application for what I needed, whether it was \$50 or what amount I needed—if it was for this, that or the other,—and I also know I used to talk about the syndicate. I would tell him of obligations and liens and the land upon which each rested.

Q. You have spoken of that in a general way. Did you tell him that any part of that money that you borrowed from him was to liquidate any trust upon the property?

308 Mr. LEIGHTON: The question is objected to as leading, for the reason above stated.

A. I did.

Q. This trust that you spoke of is the Jenner trust for \$2500. Did that represent \$2500 of money that had actually been loaned to you by Mr. Jenner, or how did that transaction originate? A. It was the trust so put on in August, 1889. For a year and a half previous thereto I had been dealing with him or his outrunner, an attorney born under the same foreign flag as Mr. Jenner, and certain money was obtained and certain collateral security was given, which later became worthless. Those various transactions had always curtails and changes and modifications in them. In looking over my some two or three thousand checks I have for vouchers, I was surprised to see that not one was in any way related to Mr. Jenner on



its face. I speak of this to show why I cannot give the details of these transactions. My experience with usurers has been that the transaction is never made in a way that it can be traced. The sum of \$25,000 was not received by me in full. By looking on my stubs I find some four or five hundred dollars in payments that I made to him, but drew the check to my own order so that he should not know where I banked, as he was banking at the same place and I was apprehensive—I feared lest he should know even that.

Q. Well, now, what about this collateral that you say became worthless. What was there about that? A. Well, it related to some property across the Eastern branch, which was killed. It was based on an agreement with certain parties—it was a West Virginia  
309 charter we had, and based on an agreement depending on the action of the Commissioners, the action of the Pennsylvania Railroad Company and of one or two private parties. The secretary of state of West Virginia it was illegal there and the action of Congress, the Pennsylvania Railroad Company and the Commissioners prevented the carrying out of the agreement, so the charter was lapsed. I paid off everything; assumed as usual all the obligations myself and paid them, as in the case of Mr. Jenner, I did it in this way, and took chances with it.

Mr. LEIGHTON: We object to this answer, and shall move to strike it out for the reasons above stated.

Q. And when you say that you paid or liquidated it, or did it in this way, what do you mean? A. I mean that Mr. Jenner would have been a loser out and out, but for my voluntary act, at his suggestion or at his attorney's, Mr. Berryman, and I not only put it on there—

Q. Put what? A. Put the \$2500 trust on Crescent Heights, but paid for the abstract or certificate of title, to show that it was all right.

Q. Now, at the time that the property was purchased by the syndicate from you, what knowledge, if any, had Mr. Jenner of the existence of this Ashford and Stickney trust on any of this property?

A. Owing to the action of the Pennsylvania railroad and a reverse action of Congress, the policy of the District Commissioners had disarranged all my plans and matters. That indebtedness on  
310 there, I had received no equivalent for it but the promises of

40 business men here, that they would join in a certain matter. Before the first one put his name to the subscription list the auctioneer was advertising that property and it became a laughing stock and a joke in the real estate circles here—the postponement and extension of that sale. I had been to Mr. Jenner over and over again to get means with which to pay the deposit before the day of sale. The postponement of that sale went to the extent of six or eight, and the auctioneer told me repeatedly how often he was annoyed by people joking on it. In that way, Mr. Jenner knew of it. The sympathy for my tribulations was such that the auctioneer,

often would take my check or my note either of which he knew were not good at that time; would take my promise in connection with it, and on his own responsibility give the extension; and I finally turned in other directions and received money and cleared it up. The one salient point in that is it accounts for my habit and custom of tendering something to the auctioneer, probably, besides cash. The corroborative evidence that I have to present to the truth of this is, that the auctioneer turned over his matters later to one Benjamin F. Leighton, a reputable attorney at this bar, even in those days, and Mr. Leighton wrote me to call and turned over to me those certain checks and promissory notes, which I can produce if desired and the letter of Mr. Leighton. It illustrates further my business methods and the confidence or trust which people had in me.

Q. Now about this sale, or attempted sales of this property, there was one thing that I omitted to ask you, and that is, why you had

311 some one bid in this property for you rather than bid it in yourself? A. It was a matter of legal advice. There are several points. I accepted the advice of my attorney in that matter;

I acted altogether on my attorney's advice, and I find it is not infrequent in auctions that the real purchaser does not appear. I recall one attorney at one of these Ashford sales, who was the attorney for the holder of the note, telling me that he would not accept my bid as he knew that it was not good. I do not know whether a lesson of that kind helped me to follow my attorney's advice or not.

Q. Well, it was solely because of this matter of advice, as I understand it, that you did not personally bid? A. It was inexpedient to bid personally, I so estimated it, after my attorney said so, that was all.

Q. And it was because of that that you so acted? A. Certainly.

Q. What purpose or object had you in bidding in or purchasing this property, if you had any?

Mr. LEIGHTON: The question is objected to as incompetent and immaterial and not responsive to anything, and not proper rebuttal.

A. The moment I saw the advertisement, I rushed to my attorney; he told me that if I could do so, to bid it in, of course not personally, so that I would have the whip hand in the case. I knew that I could not wrong the syndicate—not any member of the syndicate—I had 312 no desire so to do, and I had quite as little to be wronged by the syndicate. I may have shown great generosity to the point of folly in my dealings, but I have a very strong sense of justice and it is that sense which animates me, I made the effort of my life to compass that point. But for a telegram—I have about 20 here that are available as exhibits—but for a misleading telegram, I should probably have succeeded.

Q. Now, as I understand it, it was your purpose to buy in this property?

Mr. LEIGHTON: The question is objected to as leading, and for reasons above stated.

A. It certainly was my purpose.

Q. And if you had completed your purpose to purchase that property, how did you intend to hold it?

Mr. LEIGHTON: That question is objected to for the same reasons.

A. I intended to hold it. The whole of Crescent Heights property was in the hands of the equity court. I have always been told that when one gets into equity he does not get out until equity is done to all, and I expected to get into that—what I feared was that it would get into an innocent holder's hands and not be recoverable.

Q. I do not know that you have just answered my question, Mr. Starkweather, and that was, if you had completed your purchase, for whom would you have owned that property or how was the property to be held by you, whether individually or for whose benefit?

Mr. LEIGHTON: The question is objected to as leading, and as irrelevant and not proper rebuttal.

313 A. For the benefit of the syndicate share holders, and my purpose is well shown definitely on November 19, six days after the bidding when Mr. Jenner told me that he did not consider his shares worth 25 cents a piece. I told him in his exhibit, I would take his four off his hands at their face value of \$10,000. I felt that he would be eliminated from the syndicate in that way, as he had been its tormentor from my viewpoint, for many, many months.

Q. Now, there has been, on the part of Mr. Jenner, some statement made respecting your relations with the Hubbards. I do not believe that you stated in your testimony how long you had been acquainted with the Hubbards? A. My relations began—

Mr. LEIGHTON: The question is objected to, this was all gone into in his examination in chief.

Mr. DONALDSON: My recollection is that it was gone into very fully, and that Mr. Starkweather testified that his relations had been very friendly until Mr. Jenner went to Hartford. Mr. Starkweather also testified that he had been intimately acquainted with Mr. Stephen A. Hubbard for a good time.

A. In 1860, as I was entering my teens, in the "Press" office where Lincoln's War Secretary of the Navy, Gideon Welles, Joseph R. Hawley and Charles Dudley Warner were associated with Stephen Hubbard—my relations began there. Later when I went to South America where I was a regular correspondent of the paper, I learned that Hubbard liked my way of attending to my duties that he liked me from the first—His only complaint of me was that I  
314 was looking out for others rather than for myself. From 1878 to 1886 he authorized me—draw on him at sight for any-

thing I wanted. I never expected that I would have to ask him for anything until an emergency arose in connection with this Crescent Heights property here, and at that time——

Q. And at that time what business were you engaged in, if any?

A. It is just 20 years ago this month, I was a translator of five different languages in the Interior Department, when I set out to get a modest home for myself and family and saw the sign board on this property which was for sale, what is now known as Crescent Heights the name given by me; the former name was "Tip Top." I found from the neighbors that it was "heired land" it was an estate. I found one lot centrally located in it, owned by a building association, which I called the "keystone lot" from its peculiar position there. That was the first property that I put any money on which was Mr. Hubbard's. A tax tangle arose and I located over nearer Rock creek. For two years I urged those heirs to not let the lot get away from them, as it would be to their disadvantage; I was assured that no one could get on to it except by balloon and that a shot gun would be used if any one came near. Our relations became hostile at length, the shot gun man soon died, and after advertising for others, they came after me and implored me to buy. Rock Creek park was taking my home over there and I then could not sell it. (this keystone lot) one of those heirs felt aggrieved that I did not sell they said several hundred dollars more could have been obtained if I had thrown in that lot. I told the aged widowed grand-mother, that if the property yielded me, as I hoped it might, I would  
 315 make up that then, but at all events to let me know if she was in trouble. I have from 50 to 100 letters from her, probably a larger number—she was in danger of being sold out and I borrowed money to pay. The first money I received from Crescent Heights sale was that \$10,000, of August 4, 1892, as the record will show. In looking back at my check book I find that the first six checks I drew, were to that particular widow, or to her butcher and baker or to persons whom unfortunately she was owing; the amount of these was for \$250. I have from 30 to 40 checks which I have given her. It illustrates another of my methods of dealing.

Mr. LEIGHTON: This answer is objected to as being a matter of personal history and having no relevancy to this case, and not responsive to the interrogatory propounded by the attorney.

Q. Who was the person to whom these payments were made?

A. Virginia C. Lewis——

Mr. LEIGHTON: The question is objected to.

A. (Continuing:) I have 150 vouchers, if the opportunity of producing them, is given me disproving Mr. Jenner's allegations and gross assertions concerning my methods.

Q. Were those payments made in liquidation of your own personal obligations?

Mr. LEIGHTON : Question objected to as immaterial and not proper rebuttal testimony.

A. Out of 40 vouchers, four or five I notice are in curtail of a note which I had given for an actual indebtedness; the others are  
316 absolutely gratuitous in carrying out that golden rule, sentiment and promises that I made at the time of purchase.

Mr. LEIGHTON : Same objection to answer.

Mr. FORREST : The solicitors for the complainant say, that this testimony is given for the purpose of showing the character of man the complainant is, and it is to meet the attacks that have been made upon that character, the sweeping assertions of the defendant with respect to Mr. Starkweather in his testimony.

Mr. DONALDSON : If the testimony is offered for that purpose we think it is immaterial and incompetent, and at the proper time shall move to strike it out.

Q. Have you any letters in your possession from Mr. Hubbard of a recent date, that is, before his death? A. I have probably hundreds of them; correspondence extending over several years.

Q. Do you know the handwriting of Mr. Stephen Hubbard? A. I do.

Q. And know his signature? A. I do.

Q. I show you a letter bearing date April 2, 1886 (handing paper to witness) and ask you whether that is in the handwriting of Mr. Hubbard? A. (After examining.) It is.

Mr. FORREST : We offer that letter in evidence.

Mr. LEIGHTON : We object to it as being immaterial and irrelevant, and not proper rebuttal.

Q. Do you know the handwriting of Elizabeth B. Hubbard?  
317 A. I do.

Mr. LEIGHTON : Same objection.

Q. She, I believe, is the wife of Mr. Hubbard? A. The widow.

Q. I show you a letter dated June 11, 1890, and ask you whether that is in the handwriting of Mrs. Hubbard?

Mr. LEIGHTON : Same objection.

A. It is.

Mr. FORREST : We offer that letter in evidence, and particularly the last paragraph thereof.

Mr. LEIGHTON : Same objection.

WITNESS : It is dated five months from the day of her husband's decease.

Q. Mr. Jenner has also, in his testimony, stated in general terms that you frequently borrowed money from him upon the false representation that you would pay it at a certain time, and failed to do it. What have you to say to that? A. I always found Mr. Jenner

one of the most methodical of men and I was scrupulously punctilious whenever anything matured, whether it was to be paid in full, or otherwise provided for; I never failed to appear and arrange in some way satisfactory to him.

Q. Did you at any time during your business relations with Mr. Jenner, obtain any money from him under false representations?

A. I never did.

Q. This statement that Jenner got possession of in the manner that you have stated, and which has been filed by him as an exhibit, has been called to your attention during your direct examination; I understand that there are one or two matters in here that you desire to testify about, and about which I have not, heretofore called your attention. Without asking you the direct question, but as you are the complainant in the case, I will ask you to make such explanation of any matter in here as you desire? A. (Referring to paper in witness' possession.) I "over ten years ago abandoned the northwest as a field of labor." Mr. Jenner testified that he exhibited this to prove my falsity, and stated this as an instance of it. This statement was made November 19, 1897. On January 23, 1887, ten years and ten months previous, I began with my real estate in the southeast and as soon as possible sold the two northwest pieces, giving my attention wholly to some hundreds of acres in the southeast. I have many deeds and many vouchers here to corroborate all of this, and shall have a witness or two in the same connection. At another point, a "friend of mine has held my deposit for weeks and I have daily expected him to report the transaction closed." The friend here referred to was one Richard P. Evans, or rather the firm of Littlefield, Evans & Co. I think I have here the voucher or check of \$50 which covers that point, and which can be exhibited if my attorneys so desire. "Two months ago I contracted to sell a property of mine in the far south, for \$10,000 cash, the papers of which are in escrow with one of our trust companies." I can produce, if my attorneys so direct, those papers from the Washington Loan and Trust Company, where they now are. I wish to explain the quotation here "I need \$14,000 spot cash" &c. It may be well to state \$7,000 was to complete the purchase at the Crescent Heights sale. The 80 acre tract in 40 and 40 acres, of which I made mention and the \$4,000 &c. I have checks here to the extent of over \$35,000 which, comparing them with certain data from the recorder of deeds and these checks, they will be found to correspond to a remarkable degree varying only in a matter of a few dollars and cents; the larger sums are correct; "the cemetery has cost me over \$100,000 already." I have record evidence to prove that assertion, which can be produced at the request of my attorneys. I can even show the bank books which speak of these same \$50,000, I have between eighteen and nineteen hundred checks in one single series, in confirmation of that, besides the bank book showing its disbursements. I repeat that if it had been in my dying hour, I could not have made a more correct, conscien-

tious statement. My vexation at having it taken from me was some mixed with apprehension. I knew what Mr. Jenner's habit had been, and it was, whenever he could learn of matters and wherever he could find that during these complications owing to the death of my friend, that I was in trouble, and there was an auction sale, he went around wherever he could find I had any unliquidated obligation, and advised my creditors to foreclose besides always being present to urge on the auction, and was frequently a bidder. I have witnesses on that point.

Q. That covers your explanation then, of the items to which you desired to call attention in that statement? A. That is correct.

Q. Mr. Jenner, in his testimony stated, that he wanted that  
320 statement which he filed as an exhibit, as some tangible proof of your fraudulent methods. Had you in any way been guilty of any fraudulent methods in your transactions with Mr. Jenner?

Mr. DONALDSON: That question is objected to as an incorrect statement of the testimony of Mr. Jenner, who testified that he preserved the paper as a memento of the occasion. The question is further objected to because Mr. Starkweather has already testified over and over again that he has never been guilty of any fraudulent misrepresentations to any human being.

A. I had not.

Q. I do not know whether I asked you about this blanket trust, that is, as to what it represented. What was the purpose and object of giving this blanket trust?

Mr. LEIGHTON: The question is objected to as having been gone into fully in the direct examination.

Mr. EVANS: I consider all this testimony to-night, as entirely relevant, because Mr. Jenner, throughout his testimony, has accused Mr. Starkweather of fraudulent transactions in connection with the sale of syndicate shares to him, in connection with the blanket trust especially and other trusts which Mr. Jenner, in his testimony, claimed he knew nothing about. Mr. Jenner having attacked the character of Mr. Starkweather's transactions throughout this entire matter in controversy, in our opinion, leaves the door wide open to put in testimony showing Mr. Starkweather's good faith throughout, and the *bona fides* of all these transactions. And this question now put by Mr. Forrest, is intended to bring out, in rebuttal, the exact facts relative to the placing of this blanket trust, of which Mr. Jenner  
321 claims he had no knowledge.

Mr. DONALDSON: The statement of Mr. Evans is only a repetition of what Mr. Forrest has already stated to-night and an extension of the statement.

The WITNESS: Mr. Hubbard's only complaint of me was my excessive unselfishness. The little place on Rock creek which I was attempting to call home and where my family was located, was a

debt. The accuracy of my bold forecasts and predictions in regard to real estate values gave him evidence of my sound judgment. I always have had an unconquerable aversion to business; hence, when I said from time to time, that "here is an opportunity to make," or "there is a bargain in real estate"—he at once sent money and told me to cover it and put it in my own name. The idea was in my mind—probably if things should turn out enough profit, it would enable me to remove my little homestead from debt. Before we were aware, I found from my private memoranda that it was \$11,560 that had been expended. I became nervous lest something should come to cause its loss in some way, for it covered 200 acres of land, representing the first payment on 200 acres of suburban ground, and seeing the changed attitude of the Commissioners regarding subdivisions, &c., I therefore put on that blanket trust. I resigned 17 years ago from my position in the department, to brace up and meet a \$50,000 indebtedness, with its complications, entanglements, &c.; since resigning I have been all these years involved against my will, entirely in straightening out and saving the situation, as best could be done, and the Hubbard estate would

never have known of a penny being due from me but for my excessive conscientiousness in the matter, and it seems a little hard to be accused of not paying interest on that to the Hubbard estate. It may have been intended by my friend Hubbard as a gift to me, but I never was able to view it in that way, and hence have been led to all of these complications. Every creditor waited on me, the pathos of my story seemed to be irresistible. A striking instance of this was that I noticed in a receipt from Davidson & Davidson where Thomas H. Gaither waited 18 months lacking a few days for his interest, and previous to that they had waited five months for me. I had promised Mr. Davidson to pay interest on interest, and after the sale to the syndicate, the three semi-annual payments were made by me plus \$19.40 compound interest. I give that to show it is only a sample of what nearly all the other creditors did in extending and giving me every possible facility to come out.

Q. What was the total amount that was finally paid to the Hubbard estate growing out of this blanket trust on this property? A. It was \$5,000 plus interest on the same, from May 2, 1892 to February, 1898, or to the date of that payment after the sale of February, 1898, which made something like \$2,000 more I think.

Q. And that \$5,000 was, with the interest, the amount that you have represented to this syndicate, that the syndicate property could be released from the obligation of the Hubbard trust? A. Shortly after Mr. Hubbard's death I intimated that it would be necessary to

have a pro rata of that to each piece and suggested \$3,000 for 323 Crescent Heights, which was accepted by them as satisfactory at the time of meeting that was in 1890. In 1891 I had an agreement from the Hubbard estate which I put on record, that they would release for a reasonable pro rata on each piece. In 1892 I indicated that \$5,000 seemed a more reasonable amount for that



property and they were ready to take it, repeatedly, but Croissant and Johnson always failed to have it when they were ready and waiting for it. Croissant once or twice, announced to me that they had it and to notify Hartford, but the trustees failed to get it. In 1898 it was my suggestion—idea—that it was unfair to release Crescent Heights without the interest from May 2nd, and that suggestion was acted upon. So there was no misrepresentation on my part and the Hubbard estate invariably listened to me on that point.

Q. You were in the Government service down to what time, Mr. Starkweather? A. The last of June, 1887.

Q. Prior to the time that you left the Government service, had you been engaged in the real estate business to any extent? A. None whatever, as a business. My first move in that direction was 20 years ago. In September, 1884, I obtained possession of a little place on Rock creek. In first attempting to buy "Tip Top" (Crescent Heights) there was an entanglement over the taxes; so I bought Crescent Heights and later gave one heir a quit claim in January, 1887. My purpose and expectations being to sell to meet the obligations on my home property. My tastes were not for business and

I am reluctant to continue in it. People are quick to recognize this, and that coupled with my unfortunate generosity is what seems to precipitate my troubles, because they overlook my sense of justice in all of these matters, seemingly.

Mr. FORREST: The direct examination of this witness is closed, though counsel may recall him after the cross examination is through should there appear to have been any matters omitted.

GEO. B. STARKWEATHER.

The further taking of testimony was here adjourned until Monday next, May 9th, 1904, at 1:30 o'clock p. m.

JNO. E. McNALLY,

*Examiner in Chancery.*

MONDAY, May 9th, 1904, 1:30 o'clock p. m.

Met pursuant to adjournment.

Present: Same parties as before.

Whereupon, SAMUEL R. BOND, a witness produced on behalf of the complainant, having been first duly sworn according to law was examined and testified as follows:

Direct examination.

By Mr. FORREST:

—, What is your full name? A. Samuel R. Bond.

Q. Mr. Bond you are a member of the bar? A. I am.

325 Q. Do you know Mr. George B. Starkweather? A. I do.

Q. How long have you known him? A. I have known him since 1887.

Q. Have you ever had any business transactions with him? A. I have, for clients, as attorney.

Q. And do you recall any real estate transactions that you had with him in 1887, the year that you say you met him? A. Yes; I first met him as a proposed purchaser of some 43 or more acres of land on the Bowen road in this District, where he now resides, I believe.

Q. In what direction is that? A. It is beyond Anacostia.

Q. Did those negotiations ripen into a sale? A. Yes. I had foreclosed a deed of trust on that property, and my client became the purchaser and he sold it to Mr. Starkweather. I prepared the deed of trust and notes, and perfected the transaction of the sale.

Q. Outside of that transaction had you any other business dealings or transaction with Mr. Starkweather? A. Yes; I had a claim against him consisting of notes secured by deed of trust on some property here and in Maryland, which my client put in my hands—a member of Congress, who was then, and is now a non-resident.

Q. Now, in your dealings with Mr. Starkweather, what sort of a man did you find him to be?

Mr. LEIGHTON: The question is objected to as irrelevant and immaterial and not proper rebuttal.

326 Mr. DONALDSON: And it is not the proper way to prove the character or reputation of a person.

The WITNESS: In what respect, may I ask?

Mr. FORREST: In respect to his veracity and fair dealing with respect to this transaction?

Mr. LEIGHTON: Same objection.

A. Mr. Starkweather seemed to be a very sanguine man, often promising what he afterwards was not able to perform. I never knew any instance that indicated a lack of veracity on his part in any matter.

Q. In any of his dealings with you, with respect to transactions, did you ever know him to make any fraudulent representations respecting the matters that you had with him?

Mr. LEIGHTON: Same objection.

A. Not that I discovered to be fraudulent.

Cross-examination.

By Mr. LEIGHTON:

Q. Do you know Mr. Starkweather's general reputation in the community, for truth and veracity?

Mr. FORREST: That is objected to as not proper cross examination and as being incompetent.

A. I do not think I do. I never have come in contact—never lived in the vicinity or come in contact with any people who spoke on that subject, that I know of.

Q. You say, in this second transaction he had made several promises that he did not fulfill. State what they were? A. They were chiefly his promises to pay some taxes on the property  
 327 upon which I held this deed of trust, and he was not prompt in keeping those promises but he always managed to keep with the limit for a tax deed.

Q. He promised to pay and failed to pay at the time that he promised? A. Yes.

Q. He did that a number of times? A. Yes.

Q. How about his interest; did he keep that up—violate any promises in regard to that—the payment of his interest? A. I do not think he ever promised to pay me any interest. I think his promises, if any, were with my client. I was not to foreclose; but I was particular to see that the taxes were paid, so as not to injure the title to the property.

Q. The mortgage was put in your hands not for collection, then? A. Not to proceed legally, as long as he kept the taxes paid.

Q. Were there any other instances, during your dealings with him, in which he made promises that he failed to keep except those two instances? A. In the first transaction when he purchased the property, he gave a deed of trust to secure part of the purchase money and there were promises made that he did not keep promptly in regard to the payment;—keeping the interest paid and paying the principal, but finally he paid it all—closed the matter by payment.

Q. But not within the time agreed upon? A. Not always upon the times agreed upon.

Q. You did not attribute this failure on his part to keep his promises as due to any moral delinquency, but due to his finances?  
 328 A. That is the conclusion I drew.

Q. Have you any objection to disclosing the name of the client for whom you offered this property in the first transaction?

A. No. It was Judge W. P. Dole, now deceased. I do not see that it is any breach of confidence or any thing of that kind in disclosing his name.

Q. Did you at any time represent a man by the name of Mindeless? A. No, I did not.

Redirect examination.

By Mr. FORREST:

Q. These taxes, as I understand you, were not paid promptly, as the taxes accrued, but were liquidated by Mr. Starkweather before anybody had acquired rights by tax deeds—is that right? A. Yes.

S. R. BOND.

Subscribed and sworn to before me this 9th day of May, 1904.

JNO. E. McNALLY,

*Examiner.*

*Examiner in Chancery.*

Whereupon, JAMES A. COLLINS, a witness produced on behalf of the complainant, being first duly sworn according to law, was examined, and testified as follows:

Direct examination.

By Mr. FORREST:

329 Q. Mr. Collins what is your full name? A. James A. Collins.

Q. What is your business? A. I am secretary of the Shenandoah Slate Company.

Q. Do you know Mr. Starkweather, Mr. Collins? A. Yes, sir.

Q. How long have you known him? A. I suppose about ten years probably; something like that.

Q. Do you know where this Crescent Heights property is located, near Spring road in the county? A. Yes, sir.

Q. Do you recall a sale or attempted sale of that property that was made in November, 1897? A. Yes, sir.

Q. What connection, if any, did you have with the attempted purchase of that property? A. I attended the sale and bid on the property.

Q. Did you bid in your own interest or in the interest of some one else? A. In the interest of some one else.

Q. Who was that? A. Mr. Starkweather.

Q. Were there many persons at that sale? A. No, sir; I do not think there were more than a dozen or so—probably not that many. I remember distinctly that it was a cold day and there were very few people there.

Q. Any one else bidding besides yourself? A. Yes, sir; one other party.

330 Q. More than one? A. I think—no, I did not recognize but one man.

Mr. LEIGHTON: This line of evidence is objected to as not proper rebuttal.

Q. And so that property was finally knocked down to whom? A. To me.

Q. Now, in making this bid for Mr. Starkweather, were you in any way limited by him as to the amount that you should bid for the property?

Mr. LEIGHTON: The question is objected to.

A. I do not recall that I was at all.

Q. And at that sale was the property knocked down to you? A. Yes, sir.

Q. And what did you do, if anything, towards making the deposit? A. I gave him a thousand dollar bill.

Q. Gave whom? A. The auctioneer.

Q. Now, were you present at the second offer of this property for sale in February, 1898? A. No, sir.

Q. You have spoken of one other bidder. Do you know who that was? A. I do not. I saw the gentleman a number of times during the next summer after the sale—I frequently met him on F street; but I do not now remember him.

Q. Would you know his name if you heard it? A. No, 331 sir; I did not hear it there, and had no reason to remember it particularly.

Q. During the progress of the sale was there any conversation between the auctioneer and the trustees? A. Well, there seemed to be more or less discussion among the crowd, but I did not know who they were. They were all strangers to me, entirely; but there was considerable consultation going on among the crowd. I was at one side.

Cross-examination.

By Mr. LEIGHTON:

Q. Mr. Collins, at whose request did you go there? A. Mr. Starkweather's.

Q. Did he furnish the thousand dollars that you put up? A. Yes, sir; he furnished the thousand dollars.

Q. And you went there at his request. You had no interest in the property yourself? A. No, sir; it was a friendly act on my part for Mr. Starkweather, that is all.

Q. When you took the money from Starkweather, did you give Mr. Starkweather a receipt? A. No, sir.

Q. When did he give you the thousand dollar bill, that day? A. He gave me a thousand dollar bill that day.

Q. Just before the sale? A. Yes, sir.

Q. And you have no written memoranda of it? A. No, sir. He simply asked me to bid on that property for him.

332 Q. Mr. Starkweather was there himself at the time of the sale? A. Yes, sir.

Q. Did he state to you no reason why he wanted you to bid? A. No, sir.

Q. Did you know a man by the name of Ricker in the transaction at all? A. I did not know any body but Mr. Starkweather.

Q. You do not know Buck? A. No, sir.

Q. Did you get a receipt from the auctioneer? A. I do not remember whether I did or not.

Q. If you did, what did you do with it? A. I did not get a receipt out there. I went to the auctioneer, but I do not recall whether I got a receipt or not.

Q. Duncanson was the auctioneer? A. Yes, sir; down here on the corner of D and 7th street.

Q. And you say that you do not remember whether you got the receipt there or not? A. I went to the office.

Q. Was there any body there except yourself and Duncanson? A. No body but him and I.

Q. Mr. Starkweather did not go with you? A. No, sir.

333 Q. You don't recollect whether he gave you a receipt then or not? A. He evidently must have given me some evidence of a receipt, but I do not recall what it was. He told me to go to the office the next day.

Q. The property was struck off in your name? A. Yes, sir.

Q. You never completed the purchase? A. No, sir.

Q. You had no further connection with it? A. I do not remember any thing further about it.

Q. You never assigned your purchase to Starkweather or any body else? A. No; there was no form of papers made in any way. I cannot remember what it was he gave me down there; it has gone out of my mind entirely. It ended my transaction with the property.

Q. How many bids were there made on this property that evening of the sale? A. There were quite a number. I could not tell you how many. It commenced at a small figure and ran up, as I recollect, to \$27,000, and of course, there were quite a number of bids between the beginning and ending of it.

Q. And your bid was the last bid, the \$27,000? A. I think that was the bid.

Redirect examination.

By Mr. FORREST:

Q. You spoke about quite a number of bids. We understood you to say in your direct testimony there were but two bidders?

334 A. There was only one man bidding against me, and he made a number of bids against me. Only that one man bid.

By Mr. DONALDSON:

Q. Mr. Collins, whatever paper you got from Mr. Duncanson in the shape of a receipt, you turned over to Mr. Starkweather? A. I believe so, I do not remember what was done. It was all in Mr. Starkweather's interest, and what I did I did for him.

JAMES A. COLLINS.

Subscribed and sworn to before me this 9th day of May, 1904.

JNO. E. McNALLY,

*Examiner in Chancery.*

Whereupon, STEPHEN H. STARKWEATHER, a witness produced on behalf of the complainant, being first duly sworn according to law, was examined and testified as follows:

Direct examination.

By Mr. FORREST:

Q. Your full name is Stephen Hubbard Starkweather? A. Yes, sir.

Q. And what relation are you to George B. Starkweather?  
335 A. He is my father.

Q. Do you know Herbert W. T. Jenner, either personally or by sight? A. I know him well by sight, but am not personally acquainted with him.

Q. And do you know Herbert Giesey, either personally or by sight? A. Yes, sir; I know him by sight, well.

Q. Do you know where this property known as the Crescent Heights is located? A. I do.

Q. Were or not you present in November, 1897 when a sale was made of this property? A. I was present.

Q. How many persons were there at the sale? A. Well, there were not many. I don't know the exact number; I should say there wasn't over a dozen.

Q. Can you mention the names of any of the persons whom you saw there? A. Yes, sir. I saw Mr. Giesey, Mr. Jenner, Mr. Johnson and my father, and Mr. Collins.

Q. Do you recall any others? A. Judge Cole was there.

Q. Do you know Mr. A. B. Duvall, either personally or by sight? A. No, sir; I did not know Mr. Duvall.

Q. Do you know who bid at the sale, on that property? A. Yes, sir; Mr. Collins and Mr. Giesey.

Q. Do you know of anybody else bidding besides those two?  
336 A. No, sir; I saw no one else bidding at all.

Q. During the progress of the sale was there any conversation—consultation by any one present? A. Yes, sir. Several times Mr. Giesey stopped bidding and he and the auctioneer, Mr. Duncanson, and Mr. Jenner held conversations together.

Mr. DONALDSON: This whole line of examination is objected to because it is an attempt to get in by rebuttal what is the vital point in the case, and it should have been put in in direct, and therefore not properly put in now.

Q. Were you present at the sale in February, 1898? A. No, sir.

Q. Now, you have stated that there were only two persons bidding at that sale. Can you recall about how many bids were made? A. No, sir—

Mr. LEIGHTON: Same objection.

A. (Continuing:) I cannot say how many bids, there were quite a number of bids from these two bidders.

Cross-examination.

By Mr. LEIGHTON:

Q. You were present at this sale at the request of your father?  
A. Yes, sir.

Q. Didn't he state to you why he wanted you to go—to be present?

A. Yes, sir. I delivered the thousand dollars to Mr. Collins.

337 Q. For your father? A. Yes, sir.

Q. On the grounds? A. Yes, sir.

Q. Who gave you the thousand dollars? A. My father.

Q. Your father did not want to be known in the transaction and that is why you were there—is that it? A. I don't know his motive, still—

Q. You and your father talked this case over a good many times since the sale? A. No, sir; I cannot say we talked it over many times.

Q. You have discussed it recently with him? A. Yes, sir, to a certain extent.

Q. Were you in the crowd that was bidding, or on the outside, or where did you stand during the bidding? A. I stood quite close to the crowd and bidders.

Q. How do you know there were only two persons bidding. Do you mean to say that there was not a third one, or there was? A. I watched the whole proceedings very closely.

Q. Why? A. I had an interest in it.

Q. Did you anticipate at that time any trouble? A. No, sir.

Q. Were you instructed to watch the proceedings very closely before you went there? A. No, sir.

338 Q. Why did you watch them very closely? A. Because I took an interest in the proceedings.

Q. Are you able to state that there were only two persons bidding, and that is your evidence, that you only saw two persons bidding?

A. While I can only say there were only two persons bidding out loud, yet I could not testify that no body gave a wink.

Q. And you cannot say whether there was any bids made in that way or not? A. No, sir; I cannot say, of course.

Q. How old were you at that time, or how old are you now? A. I am 23 now.

Q. Well, you were sixteen then? A. Yes, sir; sixteen.

STEPHEN H. STARKWEATHER.

Subscribed and sworn to before me this 9th day of May, 1904.

JNO. E. McNALLY,  
*Examiner in Chancery.*

Thereupon, an adjournment was taken until tomorrow, Tuesday, May 10th, 1904, at ten o'clock a. m.

JNO. E. McNALLY,  
*Examiner in Chancery.*



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TUESDAY, *May 10, 1904*—10 o'clock a. m.

Upon consent of counsel the further taking of testimony was adjourned until Wednesday, May 11, 1904, at 12 o'clock m.

JNO. E. McNALLY,  
*Examiner in Chancery.*

WEDNESDAY, *May 11, 1904*—12 o'clock m.

Met pursuant to adjournment.

Present: Mr. Forrest and Mr. Evans, solicitors for complainant, Mr. Leighton and Mr. Donaldson, solicitors for defendants, and the examiner.

Whereupon, DAVID C. REINOLD, a witness produced on behalf of the complainant, *who* being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. FORREST:

Q. What is your full name, Mr. Reinold? A. David C. Reinold.

Q. And your business is what? A. I am a patent attorney.

Q. And you have been such for how long? A. About nineteen years.

Q. Do you know the complainant, Mr. George B. Starkweather? A. I do.

Q. And have known him for how long? A. Twenty years, at least.

340 Q. Do you know Elizabeth B. Hubbard? A. No, sir; not personally. She is past knowing, I understand.

Q. Did you ever have any business dealings or transactions with her through correspondence? A. I did, and as the executrix of the estate of Stephen A. Hubbard.

Q. I show you a paper dated July 12, 1890, and ask you whether the papers described therein were in your possession, and if so, in pursuance of this paper, they were turned over to Mr. Robinson White?

Mr. LEIGHTON: The question is objected to as not relevant and immaterial, and not proper rebuttal.

A. (Examining paper.) This paper refers to the single promissory note which was turned over to Robinson White.

Q. On that date? A. To the best of my knowledge, yes, that date; it was written in my office on my letter-head.

Mr. FORREST: I offer this paper in evidence and ask that a true copy of the same may be made by the examiner and filed as an exhibit. The original to be produced at the hearing, if necessary.

(The paper referred to was here marked by the examiner as "Complainant's Exhibit No. —.")

Mr. LEIGHTON: Same objection.

Q. I also show you a paper dated September 8, 1891, and ask you whether it was in pursuance of this paper that you delivered the papers referred to herein, to Mr. White, if you did so deliver them?

Mr. LEIGHTON: Same objection.

A. (After examining.) I did.

Q. Now the paper refers to two blank deeds of release?

341 A. Blank deeds of release—yes, sir.

Q. Were those blank deeds of release turned over to Mr. Robinson White? A. Yes.

Mr. LEIGHTON: Same objection.

Q. From whom did you receive them? A. I received them in the letter addressed to me, by Mr. Hubbard, as trustee with Mr. Berryman for some real estate on which that note was secured.

Mr. FORREST: I offer that paper in evidence and ask that the examiner make a true copy thereof to be filed as an exhibit; and I will produce the original at the hearing, if necessary.

(The paper referred to and offered in evidence, was here marked by the examiner as "Complainant's Exhibit No. —.")

Mr. LEIGHTON: Same objection.

Q. You spoke of Mr. Berryman being a trustee—a trustee for what purpose, if you know? A. I understand, for some real estate on which the note was secured.

Q. I also show you a paper dated Hartford, Connecticut, July 12, 1890 and ask you whether or no, in pursuance of this paper the note referred to in the receipt of Mr. White dated September 8, 1891, was delivered to him by you?

Mr. LEIGHTON: Same objection.

A. (After examining.) It was.

Mr. FORREST: I offer in evidence the paper shown the witness, and ask that the examiner make a true copy thereof to be filed as an exhibit; and I will produce the original at the hearing if necessary.

342 (The paper referred to and offered in evidence was marked by the examiner as "Complainant's Exhibit No. —.")

Mr. LEIGHTON: Same objection.

Mr. FORREST: The solicitors for the complainant will also prove by the witness Starkweather, the signature of Elizabeth Hubbard to the papers referred to.

Q. I show you also three several papers dated, to wit: July 1, 1886, March 3, 1887 and April 25, 1887, each being a promissory note and bearing the name of George B. Starkweather and also the

name of D. C. Reinohl written over the face of each, and ask you whether or not the name of D. C. Reinohl is your signature?

Mr. LEIGHTON: Same objection.

A. (After examining.) It is my signature and my act in writing; the matter across the face of these notes.

Q. I see that the writing says on each "exchanged for note of \$14,560." What note is that?

Mr. LEIGHTON: Same objection.

A. It means the note that I delivered to Mr. Robinson White; I held at the time these notes and the note for \$14,560 and that was a blanket note which covered these notes, and before I delivered that note—I did not hold these three notes; I held the note for the \$14,560, and I knew that was a blanket note, and before I would deliver the note for \$14,560, I required that these notes should be cancelled. So I wrote across the face of these notes exchanged for the note of \$14,560.

Q. These notes that you have just referred to were the 343 notes that I have just handed you? A. Yes, sir.

Mr. LEIGHTON: Same objection.

Mr. FORREST: We offer in evidence the notes referred to and ask that the examiner make a copy of the same to be filed as an exhibit to the witness' deposition; and the original will be produced at the hearing, if necessary.

Mr. LEIGHTON: Same objection.

Q. Were these three notes that you have identified, in any way secured? A. By deed of trust, it is my recollection; I released them as trustee in exchange; I suppose they were secured by deed of trust.

Mr. LEIGHTON: Same objection.

Q. Do you know that as a matter of fact? A. I cannot recall that; it has been too long ago.

Q. Do you know the signature of George B. Starkweather? A. I do.

Q. Tell me whether the three notes that I have shown you bear the signature of Mr. Starkweather?

Mr. LEIGHTON: Same objection.

A. Yes, sir. They bear Mr. Starkweather's signatures and as much thereof as still remain. Part of it being torn away by handling.

Q. Outside of this transaction with Mr. Starkweather, did you ever have any others?

Mr. LEIGHTON: The question is objected to for the same reasons.

A. Yes, sir.

344 Q. More than one?

Mr. LEIGHTON: Same objection.

A. Yes, sir.

Q. Do you recall what those transactions were?

Mr. LEIGHTON: Same objection.

A. The first transaction I recall was in April, 1885, it was after I left the Patent Office when Mr. Starkweather was engaged in an aerial ship and in which I took an interest, for which I was to pay the specified sum—I think it was \$170; of which sum I paid him by check \$85. The thing did not pan out as we had hoped it would, so Mr. Starkweather returned to me the \$85 with interest from the time that I had paid him the money. The balance of the subscription never was called for. Since then I have had many transactions with him in the manner of assisting him in tight places, and loaning him money; in which matters I never took from him any security, holding simply his receipt for the moneys loaned; and those moneys were paid with interest.

By Mr. EVANS:

Q. Referring again to the Hubbard trust under which you and Mr. Berryman were trustees, you have testified that there were some blank deeds of release; the deeds of release in your hands, which were returned upon the request of Mrs. Hubbard made in writing in one of the exhibits as filed. Will you explain how those deeds of release came in your hands and what instructions, if any, you had from Mrs. Hubbard relative thereto?

Mr. LEIGHTON: The question is objected to for the same reason, and also, that if the instructions were in writing the writing is the best evidence.

345 A. They came to me enclosed in a letter from Mr. Hubbard instructing me to—rather instructing the trustees Mr. Berryman and myself to release any transactions of land requested or designated by Mr. Starkweather under our trusteeship. And at this time I held the note for \$14,560 and also held these deeds of release sent me by Mr. Hubbard.

Q. Upon what condition were you to make these releases?

Mr. LEIGHTON: Same objection.

A. As instructed by Mr. Starkweather.

Mr. LEIGHTON: Same objection.

Q. No conditions of payment on account?

Mr. LEIGHTON: Same objection.

A. My instructions were simply to release as instructed by Mr. Starkweather. I had nothing to do with the note.

Q. You say these instructions came to you in a letter. Have you that letter? A. I have not?

Q. Do you know what became of the letter? A. I do not know whether Mr. Berryman got it or who got it.

Q. Do you know whether it is in existence to-day. A. I do not. I have not it. When my trusteeship was ended, I paid no further attention to the letter of instructions.

Q. With relation to this Hubbard trust, or the property upon which the trust note was secured, did you ever have any interviews or conversations with Mr. Jenner, the defendant in this case?

Mr. LEIGHTON: The question is objected to for the same reason.

346 A. No, sir.

Q. Did Mr. Jenner ever call upon you with reference to any proceedings relative to this Crescent Heights syndicate?

Mr. LEIGHTON: Same objection.

A. He never called on me. I met him in the elevator of the Patent Office, I think, when Mr. Jenner said to me that there was nothing in that case, nothing in that suit.

Mr. LEIGHTON: Same objection to this answer and also it is hearsay, and we shall move to strike it out.

Q. Was that all he said? A. Yes, sir.

Cross-examination.

By Mr. LEIGHTON:

Q. Did you ever meet Mr. Hubbard? A. No, sir.

Q. The business you transacted for him was through Mr. Jenner?

A. No, sir; I had nothing to do with Mr. Jenner.

Q. I mean Mr. Starkweather? A. Yes, sir.

Q. Your name was suggested to Mr. Hubbard by Mr. Starkweather? A. That I do not know; I was not present.

Q. You were a stranger to him? A. Yes, sir.

Q. You say you loaned Mr. Starkweather various sums of  
347 money. How much at a time, do you recollect? A. I have loaned him hundreds of dollars.

Q. At a time or different times? A. At different times.

Q. How much was the most that you have loaned him at any one time? A. That I cannot recall.

Q. Over two hundred dollars? A. I am trying to recall the transactions. You will have to give me a little time. I think I can safely say there was as much as two hundred dollars. I remember one distinct transaction of \$155 I think.

Q. Generally the sums you loaned to him were small amounts for accommodation? A. It ran from \$25 to a hundred.

Q. And you only loaned to him at his solicitation? A. Just as he came to me, as a friend.

Q. You loaned him money as he requested? A. Yes, sir.

Q. Mr. Starkweather's financial condition has been that of adversity for a number of years?

Mr. FORREST: That is objected to.

(Question not answered.)

Q. He has appealed to you a number of times for loans of money in the past few years? A. Well, if you call twenty years few.

Q. He has been borrowing from you for the last twenty years?

A. I have loaned him various sums at different times during those years.

Q. And you never asked any security, but his receipt?

348 A. Never.

Q. Was there any distinct promise made by him that he would pay you on demand? Was that your universal custom when you loaned him money? A. Yes, sir.

Q. Did he ever pay you when demanded? A. Yes, sir. I say, I have no recollection of ever having made a demand on him.

Q. Now, this aerial enterprise that you spoke of, was that patented? A. It was his invention. It never was patented, but was something that he was hoping to patent.

Q. But expected to get a patent later? A. Yes, sir; I think that was his purpose.

Q. A flying machine, was it? A. I do not know what you would call it; I called it an aerial ship.

Q. To fly in the air? A. Yes, sir.

Q. He did not succeed? A. I don't know to what extent; I know that it was abandoned by him; I think it was set aside, laid on the shelf. He had other matters. It was at the time he was engaged in this real estate matter, and he said he had no time to devote to it, and he returned my money with interest.

Q. This letter that you say you received from Mr. Hubbard containing instructions about what we call the blanket trust; have you made any search for that? A. My recollection is that since Mr.

Hubbard's death I have gone through my safe for it, after  
349 the transaction with Mr. Robinson White, and could not find it; I do not know where it is.

Q. When was the last time you saw it? A. About the time that Mr. Robinson White was acting for Mrs. Hubbard.

Q. That was after the death of Mr. Hubbard? A. Yes, sir.

Q. And it was in your possession then? A. Not after that day.

Q. And you do not know what you did with it? A. I do not know.

Q. Where is Berryman now? A. I have no knowledge.

Q. Is he in this jurisdiction? A. I have not seen him for years. My recollection is that he went south years ago.

Q. Robinson White was at this time the attorney or agent of Mrs. Hubbard? A. Robinson White; yes, sir. He brought Mrs. Hubbard's communications to me and I transacted business for her through Mr. White.

Q. Did you have any instructions from either Mr. Hubbard or Mrs. Hubbard for the cancellation of these three notes? A. No, sir.

Q. Well, how did you come in possession of these notes? A. My recollection is, that Mr. Robinson White brought them to me when the \$14,560 note was to be delivered.

Q. Were these various sums of money represented by these  
350 notes incorporated in that note? A. That is what I understood and Mr. White understood; and it was upon that  
me \*  
condition that these notes were delivered to him and marked exchanged

Q. You don't know whether these represented money loaned to Starkweather or not? A. They simply came from Mrs. Hubbard as executrix.

Q. And you don't know whether they were secured by deed of trust or not? A. No, sir; I do not.

Q. Do you know of any other enterprise except this flying machine, in which Mr. Starkweather has not succeeded? A. No, sir.

#### Redirect examination.

By Mr. EVANS:

Q. With reference to these notes about which Mr. Leighton has just inquired as to whether they were secured by deed of trust or not. I show you a paper dated Washington, D. C., July 11, 1890, and signed by Mr. George B. Starkweather, and ask you whether or not by reading this letter, you can refresh your memory upon the point, of the notes referred to having been secured? A. (After reading paper.) There is nothing in this letter which implies that the notes were secured by deed of trust. This simply gives me notice that there were other outstanding notes covered in this blanket note, and of which I informed Mr. Robinson White; and it was in consequence of that information that he brought these notes to me from Mrs. Hubbard and demanded this \$14,560 note. After  
351 having received this, I asked him if there were not other notes and if this was a correct statement, that they were covered in this blanket note; I stated that I would want those other notes returned and exchanged for the note that I was to deliver, and he brought these notes from Mr. Buck, whom I understood was Mrs. Hubbard's attorney in Hartford.

DAVID C. REINOHLE

Subscribed and sworn to before me this 10th day of May, 1904.

JNO. E. McNALLY,

*Examiner in Chancery.*

CHARLES A. BAKER, a witness produced on behalf of the complainant, having been first duly sworn, was examined and testified as follows:

Direct examination.

By MR. EVANS:

Q. Mr. Baker, are you acquainted with Mr. George B. Starkweather? A. I am.

Q. And the defendant, Mr. H. W. T. Jenner? A. I am.

Q. Were you ever connected in any way with the Crescent Heights Syndicate? A. Yes, sir; I was a shareholder in the syndicate at one time, for a few months, perhaps a year—I guess probably a year and a half.

Q. Do you recollect how many shares you held and what  
352 were their numbers? A. I held one share; I do not recollect the number.

Q. What became of that share? A. I sold it to Mr. Starkweather.

Q. Do you recollect about what time you sold it? A. Yes, sir. It was sometime in March, 1894.

Q. What price did he pay you for it? A. The first one that I recall was for \$2650, it was at least that. It may have been a trifle more.

Q. Did you ever attend any of the meetings of the syndicate shareholders? A. Yes, sir.

Q. Do you recollect how many you attended? A. No, I do not.

Q. Was Mr. Starkweather ever present when you were there? A. I do not recall of his being present at any of these meetings. I recall two meetings that I attended. There may have been some others that slipped my mind.

Q. Well, in attendance at these meetings, did you ever hear any expressions made relative to Mr. Starkweather, if so, of what character?

MR. LEIGHTON: This question is objected to as immaterial and irrelevant and not proper rebuttal.

A. I remember hearing his name mentioned, but I do not recall in just what manner.

Q. Do you recollect whether Mr. Jenner was present on those occasions? A. He was.

353 Q. Do you know whether that expression, or any of that character, came from Mr. Jenner?

MR. LEIGHTON: Same objection.

A. I do not recall.

Q. Did you ever have any personal conversation with Mr. Jenner relative to Mr. Starkweather and his connection with the syndicate in any way, or the syndicate certificates? A. Yes, sir; I believe I have.



Q. Will you state what they were, and what was said by Mr. Jenner?

Mr. LEIGHTON: Same objection.

A. There were conversations relative to the property which we were both interested in, directly or indirectly. I do not recall the details of the conversation.

Q. Was his attitude, during these conversations, favorable or unfavorable to Mr. Starkweather?

Mr. LEIGHTON: Same objection.

Mr. DONALDSON: And further objected to because it is asking for the conclusion of the witness instead of calling for the conversation.

Mr. EVANS: The defendant Jenner in his testimony stated in effect and substance, that he was not unfavorable to Mr. Starkweather, and that whatever he done was simply with a view to protecting certain amounts of money he had invested in the syndicate. And the question put to this witness is for the purpose of rebutting such statement made by the witness Jenner.

354 The WITNESS: I do not recall that anything took place that would lead me to feel that he was hostile to Mr. Starkweather, personally.

Q. Did Jenner ever make any request or suggestion to you relative to the possession of any syndicate shares that you held as trustee or any such capacity for Mr. Starkweather?

Mr. LEIGHTON: Same objection.

A. Mr. Jenner suggested that some shares that I held as trustee—that the title to those, should be obtained by me for the reasons, as I understand it, that he felt that my personal possession of them and personal interest in the syndicate might be more helpful than that of Mr. Starkweather. I don't know whether that was a compliment that he was trying to pay me or not.

Q. As I understand then, his suggestion was that Starkweather's interest in these certificates should be eliminated?

Mr. DONALDSON: That is objected to because it is an incorrect statement of the witness' testimony.

A. Yes. The suggestion was, that I by a simple process obtain title to these certificates.

Q. And your obtaining title to the certificates would divest Mr. Starkweather of his title. Is that the idea?

Mr. LEIGHTON: Same objection; and also the question is leading, very leading.

A. That would naturally follow.

## Cross-examination.

By Mr. LEIGHTON :

Q. From whom did you acquire this share that you sold to  
355 Mr. Starkweather? A. From the syndicate. I was one of the original share holders.

Q. One of the original stock holders. When did you sell: do you recollect the date? A. No, I could not get closer to it, than that it was sometime in March, 1894.

Q. You never attended any meetings of the syndicate after you parted with your shares of stock? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. Why did you do that? A. I did it because of the fact that I held some shares as trustee.

Q. How many? A. As I recall, four shares.

Q. Have you those now? A. Yes, sir.

Q. And they were deposited with you by Mr. Starkweather? A. Yes, sir.

Q. And he obtained from you a loan of money? A. No, sir; he obtained credit.

Q. By leaving those shares there? A. Yes, sir.

Q. And you still hold those? A. Yes, sir.

Q. How much did you loan on them? A. I did not make any loan.

Q. Was he indebted to you at the time he put them up?  
356 A. No, sir.

Q. How much money did you advance on those shares?  
A. Not any. The firm of which I was a member endorsed Mr. Starkweather's paper at the bank.

Q. It was discounted? A. Yes, sir.

Q. Was the note paid? A. No, sir.

Q. What was that note for? A. I declare I cannot state at this time just what the amount was. When the bank obtained judgment, it was for \$4900.

Q. Was it less than that when it was first given? A. As I recall, there were several transactions with Mr. Starkweather, but whether at that time the amount of the paper, upon which we were endorsers was for \$4900 or greater, I could not tell you.

Q. Was that the only security you had, these shares of stock in the Crescent Heights? A. At that time; yes, sir.

Q. The bank subsequently got judgment on that note? A. Yes, sir.

Q. Against Mr. Starkweather? A. Yes, sir.

Q. Do you know how many renewals that represented before this last note was given? A. I do not.

Q. Did that represent money that was actually paid to Starkweather or did the money come through you? A. Went to  
357 Mr. Starkweather, direct.

Q. It has not been paid yet? A. No, sir.

Q. And you still hold these certificates of stock as security on your endorsement? A. Yes, sir.

Q. Have you taken an assignment of that judgment? A. Yes, sir.

Q. You are then the owner of the judgment against Starkweather? A. Yes, sir.

Q. Now, when was this suggestion of Jenner made, do you recollect that you acquire title to those four shares? A. I do not recollect.

Q. Was it after judgment or before? A. I think probably it was after judgment was obtained.

Q. You don't recollect the date of the judgment? A. No.

Q. What was the title of the cause? A. West End National Bank against Starkweather.

Q. You were not sued? A. No, sir.

Q. Did Mr. Jenner see you more than once after you obtained this judgment in reference to your acquiring title to these shares? A. I could not say with any degree of exactness just how many times he called upon me, but probably three or four times. He was  
358 interested in this property by reason of his holdings, and I was interested by reason of these certificates which I held as trustee.

Q. When was the last meeting that you attended of the syndicate share holders? A. Well, I could not recall the date; it was on F street—

Q. In the office of Giesy? A. It was on F street between 14th and 15th. Mr. Jenner will possibly remember; I think it was in Mr. Johnson's office.

Q. Mr. Starkweather was present at that meeting? A. No, sir.

Q. You received notice from the secretary or from Johnson or from whom, to attend? A. I do not recall, I am sure.

Q. You were notified by somebody? A. I do not remember whether I received notice or learned of it from others interested in that property.

Q. I suppose Starkweather paid you something for your endorsement on his note?

Mr. Evans: I object to that.

A. He did.

Q. How much? A. I do not recall.

Q. How do you figure up the amount that he paid you for this share of stock to be \$2650? A. From the entry made in my personal books at that time.

Q. That the \$2650 represented cash?

359 Mr. Evans: That is objected to.

A. All cash.

Q. Did he pay cash when he got it? A. As I recall, he paid part ash then and part cash some weeks later.

Q. Wasn't that about the time of your endorsement on the note?  
A. No, sir; it hadn't anything to do with it.

Q. Was there any other transaction connected with the sale of the stock to Mr. Starkweather? A. No, sir.

Q. Do you recollect the date of your first endorsement? A. I do not.

Q. You don't know when he deposited these four certificates with you the first time? A. I do not.

Q. You endorsed that note before that? A. Yes, sir.

Q. Do you mean prior to that date? A. Yes, sir.

Q. And he was indebted to you in that way? A. He was never indebted to me or to the firm, he was indebted to the bank upon the note upon which we were endorsers, but it had not matured at that time.

Q. And he was, or was not in that sense indebted to you? A. That is right.

Q. When did Mr. Starkweather make the first payment on account of this stock, do you recall? A. I do not recall.

360 Q. Was it after your first endorsement? A. As I remember, the endorsement of the firm was made some little time before that. I do not recollect just how long before, but at the time of the sale of this certificate to Mr. Starkweather the sale was made by me individually and had nothing to do with the firm's transaction in any shape or manner.

CHARLES A. BAKER.

Subscribed and sworn to before me this 10th day of May, 1904.

JNO. E. McNALLY,

*Examiner in Chancery.*

Mr. EVANS: So far as any other witness except Mr. Starkweather, is concerned, the case is closed on behalf of the complainant.

Whereupon an adjournment was had until Monday, May 16, 1904, at 3 o'clock p. m.

JNO. E. McNALLY, *Examiner.*

MONDAY, May 16, 1904—3 o'clock p. m.

Owing to engagements of counsel, the further taking of testimony was adjourned subject to notice.

JNO. E. McNALLY,

*Examiner in Chancery.*

361 THURSDAY, May 19, 1904—3 o'clock p. m.

Met pursuant to agreement.

Present: Mr. Evans, of counsel for the complainant; Mr. Leighton, of counsel for defendants, and the examiner.

An adjournment was taken until Friday, May 20, 1904, at 10 o'clock a. m.

JNO. E. McNALLY,

*Examiner in Chancery.*

FRIDAY, May 20, 1904—10 o'clock a. m.

Met pursuant to adjournment.

Present: Same parties as before.

GEORGE B. STARKWEATHER, the complainant and a witness in his own behalf, resumed the stand for cross examination :

Cross-examination.

By Mr. LEIGHTON :

Q. Mr. Starkweather, in the paper handed to Mr. Jenner dated November 19, 1897, which has been offered in evidence, if you did not intend to leave it with him for his consideration why did you address it "H. W. T. Jenner, Dear Sir," if it is a mere memoranda for you to talk from. Why did you use that form of address? A. It is my habit for my own convenience and protection to draft any  
 362      thing I wish to say or write, and I naturally have to put some mark of identification upon it so as to know what its purpose was. There is nothing in what you have asked which is inconsistent with that, unless it be the "Dear Sir," and I feel sure that it was not intended to be left with him for the fact, as I have already stated, that I never deliver things in pencil, undated and unsigned. The "Dear Sir" seems superfluous from the stand-point that I have declared that I prepared it.

Q. You had already stated this same proposition to him orally, had you not? A. In connection with many other things and in a rambling conversation things are apt to get mixed, and an idea does not present itself—

Q. You have not answered my question. Will you please answer categorically? State whether or not you had or had not made this same proposition orally to Mr. Jenner prior to this delivery to him of this paper? A. Not categorically; no sir. It was not distinctly in my own mind before this.

Q. Then this was the first time this proposition was presented to him, as presented by this paper? A. It was.

Q. You desired to present it in this shape for clearness and definiteness. Was that your purpose? A. It was.

Q. So that Mr. Jenner would understand it as well as yourself? A. It was.

Q. Why did you object, if that was your purpose, to leaving the paper with him so that he might consider it? A. Because  
 363      it gave away several of the important points in my personal business affairs; it would be unbusinesslike.

Q. Were they not given away in the same manner if you had stated them to him orally; as though they had been committed to writing? A. In my life, experience has taught me that things orally uttered and not committed to writing are effervescent, and the exact sums named, the exact allegations, the exact data throughout is not remembered by the average individual definitely as when

it is committed to writing, especially if it is a proposition which he declines. I am amazed at your inquiry.

Q. Then it was in order that there might be no disputing afterward as to the exact terms of the proposition between you and Mr. Jenner, that you committed this to writing? A. That we might understand one another.

Q. Will you answer my question if you please, yes or no? A. Yes or no, will not answer that question. The magnitude of the proposition would naturally involve much discussion and I needed something in the case to refer to and figure from—to modify; and it was with that idea that I put it in writing. It had been seriously discussed.

Q. Could you not have conveyed the same thought to him orally, as was conveyed to him in this memoranda in writing? A. As far as I know the construction of my mind, I will say that I could  
364 not without introducing many other thoughts; they rush in upon my mind so rapidly that to make it clear I find that I always need to commit it to writing, to not confuse. I am frequently told that I confuse my listeners with the number of my thoughts and suggestions.

Q. And it was to avoid the confusion that you made this writing? A. Yes, sir.

Q. You read this after you had written it, to Mr. Jenner? A. I did.

Q. Well, wasn't it after you had read it just as much a proposition as though he had received it through a paper? A. It was.

Q. You mean that he would forget it or would not remember the details? A. I mean that I have control of my own memory with this paper. Accompanying the paper was a document, a sketch, and surely you cannot contend that the location of properties etc., would have been as clear in his mind without the map or plat, as with them.

Q. I am not speaking of the map, I am speaking of this paper that you read to Jenner? A. One was hardly intelligible without the other.

Q. You have not answered my question. You did not call the paper writing that you handed to Mr. Jenner property, did you?

Did you regard that as property, having any value to it?  
365 A. It might have been used to my great disadvantage. I read the paper to him, and I held it as my own.

Q. Could not Mr. Jenner have equally made use to your disadvantage, of the communication that you had made to him of the contents of the paper? A. It is not conceivable to me that he could.

Q. You mean, you having possession of the paper, if Mr. Jenner had stated its contents you could have denied that he stated them correctly? A. That proposition is inconceivable to me; I never deny the facts knowingly.

Q. You say, "I have abandoned the northwest as a field of labor

and have since centered my efforts in the southeast;" and you stated in your examination that you wanted a part of this money that you were applying for to pay for the purchase of Crescent Heights. How do you reconcile the statement in this paper with your testimony? A. When I said that I had abandoned the northwest as a field of labor, I meant that I was putting in no new thought or main effort in that direction; I was simply liquidating in that field and turning the proceeds into the southeast. My only aim and effort in that was to consummate the sale on the terms and conditions of May, 1892.

Q. You did not, as you testified, tell Mr. Jenner that you were the purchaser of the Crescent Heights property that had been sold? A. I did not tell him that.

Q. Why didn't you? A. Under the instructions of my able counsel, I did not consider it expedient. Furthermore in the  
366 very proposition itself I was offering Mr. Jenner dollar for dollar of everything that he had put in there; and as he has testified, all that he was looking after was his interest, merely to get out his \$10,000 and save it from loss.

Q. Your proposition was that if he would advance you \$14,000, you would take ten of it, and he take such securities as you had to offer, you would take his shares off his hands; that was your proposition, wasn't it? A. It was.

Q. How were you going to pay him the \$10,000? A. That pencil draft which we are discussing, was hastily drawn and that is one of the outlines that had not been fully worked out. No portion of the \$14,000 was to go to the purchase of these four shares. I, for example, could have, just as I had been doing for years with him, given him my interest bearing note and let him have held those shares as collateral security. I could have put other valuable collateral with those. There were many, many ways. That is one of the outlines which had not been worked out, and it shows the necessity of my drafting something to discuss from, as I drafted it in pencil.

Q. You expected to apply \$7,000 of this \$14,000 in the payment of the Crescent Heights purchase? A. I did.

Q. And you did not expect to apply the other \$7,000 towards the purchase of these shares of stock of Mr. Jenner in this syndicate? A. As I have stated already, I had 600 acres of land in  
367 different stages of purchase. The other \$7,000 would have been worth \$70,000 to me at that particular time, and it would have been a most foolish proposition from my standpoint, to have devoted the balance of that dearly purchased cash to the purchase of even Crescent Heights Syndicate certificates.

Q. You use this expression in this memoranda,—"Your four certificates I would take at par \$2500 each, recognizing, of course, that your figure 25 cents is about the true value." By using that clause didn't you mean to agree to Mr. Jenner's estimate of the value of his shares? A. On the basis—

Q. Will you please answer yes or no, I don't want an estimate on the subject?

Mr. EVANS: We object to the witness being called upon to answer yes or no. The witness has the right to answer the question.

WITNESS: I cannot answer that with yes or no. If forced to a single word, I will say no; if you will allow me to answer properly, I will endeavor to make it clear.

Q. At that time the seven acre tract had been sold, and so far as Mr. Jenner knew, it had been sold to an outsider. Wasn't that a fact? A. That is what he told me.

Q. He didn't know that Mr. Collins was your agent? A. He did not.

Q. And he supposed that it had gone forever? A. Yes.

Q. And there was nothing left but the three acres, which  
368 was encumbered by these colored holdings in mere value, and the syndicate had debts against it; wasn't that so? A. That is right.

Q. And from his stand-point, his estimate of the value of the property with his knowledge of the value of the certificates was about right, wasn't it? A. Very possibly. But with a knowledge of the facts in the case there was no impairment whatever in their value, any more than there was when Jenner purchased, and the real facts became known.

Q. But those facts made known at said sale, as coming from Mr. Jenner, imparted less value from the property? A. There is a time for all things. A few days later I very frankly made them known to Mr. Duvall and to all concerned. There was a time—a number of times, when it seemed expedient not to do so.

Q. You did not make them known to Mr. Jenner when you applied for this \$14,000 loan? A. I did not; and I am very glad that it is apparent in that document that I was seeking to take no advantage of his ignorance, for I was paying him out full.

Q. You say in this, that "the cemetery has cost me over \$100,000 already, and its prospects are so bright that I would not part with my interest for twice that." Was that statement true at that time? A. Absolutely true. I do not make statements which I do not consider true.

Q. That subdivision of property that is incorporated in this paper, is that owned by the cemetery? A. Not an inch of it. The  
369 cemetery never owned one foot, nor had a title to it and never will. The cemetery has less than 200 acres. I have been the purchaser and owner of 600 acres and over.

Mr. EVANS: The latter part of that answer is objected to and we move to strike it out.

Q. Why did you allude to the cemetery in connection with this proposition, if it had no relation to it? A. My motive is most unmistakable. There are many questions in there which remind Mr.



Jenner of his having told me that I never paid anything. My reference to the cemetery was merely to show him that I was a man of some means.

Q. You have spoken in your examination and have evidence of this spontaneous character in this proposition, that you were submitting to Mr. Jenner. Wasn't the spontaneous nature of it due to the fact that you were trying to obtain the sum of \$14,000 from him on such securities as you offered him? A. A conservative business man could hardly understand how such a liberal offer could be made, he, not understanding the value of money to me, at that particular time in connection with numerous pieces of property.

Q. You say that the case of Ricker against Cole and others, which has been offered in evidence, was an entire surprise? Ricker was your agent, wasn't he? A. Practically my agent.

Q. You didn't pay the cost of the court for bringing this suit? A. I have no recollection and no evidence of any thing in that connection.

370 Q. Will you say that you did not? A. I will say that I was in New York, probably all the time, and it has made no impression on my memory; and without some absolute evidence to the contrary, I should say that I did not pay any thing, and had nothing to do with it. I don't know how it came about. I repeat, it was an absolute surprise to me.

Q. Do you recollect Mr. Ricker's making an assignment to you of his purchase on the back of the auctioneer's receipt, a few days after the sale? A. It is not present to me, but I could by referring to data that I have with me, verify that.

Q. You do not recollect whether he did or did not? A. I should say that he did not.

Q. And your recollection is as clear upon that as it is about the Ricker suit? A. I cannot compare the two. Referring to this paper (witness examining paper), I can say positively that there was and is no assignment endorsed on that receipt.

Q. You have just referred to a memoranda, and that refreshes your recollection so that you are able to speak positively upon that subject? A. No, sir; I have referred to the receipt itself.

Q. You have the receipt in your possession? A. I have.

Q. Will you show it to me? A. With the consent of my counsel.

Mr. EVANS. We have no objection.

371 (Receipt was here handed by witness to counsel.)

Q. Were you present when this receipt was given? A. If it was given at Crescent Heights I was present, otherwise I was not.

Q. You don't recollect about its being given then at Crescent Heights? A. No, sir. The point that refreshes my mind most is Mr. Collins' testimony here the other day, and he departed from the fact, while forgetting that Ricker appeared in that at all, it does ap-

pear that he went down to the auction rooms the next morning. Of course, he had no pecuniary interest in the transaction and his memory is not very retentive.

Q. As a matter of fact, did Mr. Ricker make an assignment to you of his purchase, and if so, when? A. Mr. Ricker is a Boston clergyman, in whom I had implicit confidence and I do not recall at what time. I have quite a distinct recollection that when I called upon him for an assignment, he made it.

Q. How soon after the sale was that: within a month? A. I do not know.

Q. Did you give to Mr. Hubbard, prior to the note and deed of trust known as the blanket deed of trust, any security for the moneys that he advanced to you for the purchase of real property?

Mr. FORREST: That is objected to as immaterial.

A. He never suggested security. I find by referring to papers that I see my sense of caution—sense of honor, forbade my  
372 keeping money without giving some evidence of it. As was shown here the other day, I gave several promissory notes without any security, which, of course, would be estimated of little value. I later put the blanket trust on the property, which was absolute in itself and was really duplicating the others.

Q. You referred to an agreement to release the blanket trust, which is recorded in Liber 1774, folio 195, and also is an exhibit in equity cause 17,246. State whether that is the only written agreement that you have on the part of the Hubbards regarding the release of the blanket trust on Crescent Heights property on the payment of \$5,000? A. I assume that the paper you refer to is the one executed by Robinson White, legal attorney for the Hubbard estate. That instrument was given in consideration of my changing trustees for that blanket trust. That instrument is the only written one I have, save several compromises of that proposition in letters written me by Mrs. Hubbard.

Q. You spoke of purchasing syndicate certificate No. 10 for \$2650. That was issued in the first instance, was it not, to Sidney Sixbury? A. No, sir. If the records in the syndicate certificate book show that No. 10 was issued to Sidney A. Sixbury, there is a mistake in the number. I have a memoranda in my little book, that I happen to have with me, which enables me to state with positiveness that that number is the one which was issued to Charles A. Baker.

Q. There was a share issued to Sixbury without any con-  
373 sideration, wasn't there? A. No, sir; Croissant insisted on one going to him, and one to his half-brother, Sixbury, on the strength of a receipt and promise to pay interest thereon, and pay the cash therefor at the termination of the syndicate.

Q. There was nothing paid to the syndicate when it was issued? A. No, sir; that is true.

Q. Was the certificate numbered ten? A. To the best of my knowledge, which is based on my private memoranda, it was not.

The certificate for which I paid \$2650 is the one that was issued direct to Charles A. Baker.

Q. Why did you pay that sum for that certificate—were they worth that in the market? A. I do not think I have ever bought anything in the market at any time; my opinion was that it was a wise investment at that figure.

Q. You stated in that connection, it is "\$450 more than Mr. Jenner had compelled me to part with my certificate to him." What do you mean by compel, did he take you by the shoulder or hold you up, or what do you mean by it? A. He, at usurious rates, advanced small amounts of money to me and took as collateral security a syndicate certificate, of which I have written evidence to prove, the document itself in fact; and at the date of maturity, owing to the failure of the trustees to remove the colored holders, as they were obliged to do. I could not realize on my certificates, and

374 it was optional with me whether to have them put up at public auction with no bidders, or to take Mr. Jenner's low offer.

Q. You use the word "compelled". Then in the sense that you could not get any better price for the certificates any where else and that your financial circumstances were such that you let it go for that figure? A. I was led into a position where it was in his power to force me to any terms. Of course I was—

Q. What was the date of this purchase? A. It was September 25, 1894 (witness referring to a memorandum), that is, the collateral note bearing interest at ten per cent. besides the percentages and commissions, &c.

Q. Was or was not ten per cent. then a legal rate of interest in this jurisdiction? A. Ten per cent. I have been credibly informed was legal under contract, but that does not show truly what was paid.

Q. Did you ever pay, at any time, to Mr. Jenner a commission for the moneys that you obtained from him? A. I have paid all sorts of interest to Mr. Jenner.

Q. Directly to him, I mean? A. Yes, sir.

Q. When? A. Between 1888 and 1894.

Q. Have you anything to give the dates and amounts which you paid him for the loans of money? A. I kept a private memoranda, a diary during those years, by which I could recall any date as of yesterday, the transactions, &c. I state that as my general rule in those years. I suppose that I can state the dates and amounts by referring to those past records.

375 Q. Was it your custom when you obtained money from Mr. Jenner, to get the money directly from him or through a broker, or some agent? A. My acquaintance with him began through a broker. His broker and attorney, one Campbell G. Berryman.

Q. Why do you say he was Mr. Jenner's agent? A. He was so represented to me, and he introduced me to Mr. Jenner.

Q. Did Mr. Jenner represent to you that Mr. Berryman was his agent, or his attorney? A. He did.

Q. When? A. During those years, 1888, 1889 and 1890.

Q. After that introduction, did you deal directly with Mr. Jenner, or through Mr. Berryman? A. There came a difference between Mr. Jenner and his broker or agent, hence I dealt directly with Mr. Jenner thereafter.

Q. After the first introduction? A. No, sir; it was quite a period later. Mr. Jenner told me of the nature of the difference between them.

Q. Before you commenced to deal directly with Jenner, when you obtained money from or that belonged to Jenner, you dealt through Berryman? A. Yes.

Q. Had ever Berryman charged you a commission for obtaining the money? A. Well, there was some little charge; I employed Mr. Berryman. I first became acquainted with him as a collector.

376 He came to my office as a collector for other parties and I learned to deal through Mr. Berryman for certain collections of rents.

Q. Then he was your agent in certain matters? A. He acted for me as intermediary.

Q. And that is the way you became acquainted with the fact that Mr. Jenner had money to loan? A. That is how I first knew.

Q. And whenever you obtained money from Berryman, he applied to Jenner, and you paid to him a commission for obtaining it? A. I cannot state positively on that. I know that Mr. Berryman had a living to make and usually there was a certain arrangement made that engaged a certain thing at a certain price, and there would be so much to him. It was Mr. Berryman only dealing; I did not impute that to Mr. Jenner at all.

Q. Now, do you say in any case that Mr. Jenner charged you in addition anything but the interest that was named in the note for the loan of money? A. I do.

Q. Give me the dates and the amounts, if you please? A. I cannot name those; I cannot recall those; my transactions were too numerous in those days and my love of money is not such as to make my memory retentive on a precise amount.

Q. You have spoken of Mr. Jenner charging you usurious interest. I want to know whether he ever charged you more than ten  
377 per cent. on any money that you obtained from him? A. He charged me with what amounted to that. He was ever wary to avoid the direct charge; he would call things by some other name.

Q. You have not answered my question. I repeat it. I want to know whether he ever charged you more than ten per cent. on any money that you obtained from him? A. In effect, yes.

Q. What do you mean by "in effect"? A. I repeat, under some other name, whether a commission or a fee, or a discount. More or less the money cost me usurious rates.

Q. Did you ever sell any notes belonging to others or obtain money

on any notes that you held, that were payable to your order, from Mr. Jenner? A. I recall none.

Q. The money that you borrowed directly on a loan to you, on your own note? A. Yes, sir.

Q. Did any of those notes bear a greater rate of interest than ten per cent.? A. Those secured by deed of trust bore eight per cent. The others, I remember was ten per cent. While on the face, I am sure that none bore more than ten per cent. Mr. Jenner, I repeat, was too shrewd to put it in.

Mr. LEIGHTON: The latter part of that answer is objected to.

Mr. FORREST: The solicitors for the complainant suggests of record that all this line of testimony is not pertinent to the direct examination; and in asking the questions of the witness on this line, the solicitor for the defendants is making the witness his own and is bound by his answers.

378 Q. Coming back to what you call an agreement signed by Mr. Robinson White, I show you Exhibit G. B. S. No. 6 filed in the case of Starkweather against Hubbard, equity No. 17,246, and ask you to state whether the word agreement on that paper was written by you and whether the words George B. Starkweather with Robinson White, were written by you? A. No word on this paper, or its original even the name Robinson White was to the best of my knowledge and belief written by me. It is not my custom. I look upon it as forgery.

Mr. FORREST: The solicitor for the complainant suggest of record that the paper shown the witness does not appear to be the original of any paper and it does not appear to be a certified true copy of any paper of record.

Q. The record shows that this agreement, after it was recorded, was delivered to you. Is that so?

Mr. FORREST: The question is objected —, that not being the proper way to show what the record states.  
(Question not answered.)

Q. Was it delivered to you or not? A. I have no recollection. I should suppose it would have been. I have no recollection of it; I do not know what the record shows.

Q. You caused this to be recorded? A. I caused that to be recorded and should have received the original.

Q. You have no recollection or knowledge as to how the words George B. Starkweather and Robinson White came upon the  
379 paper? A. I never heard them mentioned and have no recollection of it. They were possibly put on by the recorder of deeds; I have never heard that question and had no thought of it.

Q. You think that you did not put them there? A. I am sure that I did not; as sure as that I live.

Q. Did you tell Robinson White that you were going to acknowledge this letter yourself and have it placed of record on the land records of the District of Columbia?

Mr. FORREST: That question is objected to if it is meant by its asking to accommodate the witness, on the ground that no time or place is stated or put in the question of any such conference with Robinson White.

A. I having J. J. Darlington's instructions to me to act in that way. I am not sure that I informed Robinson White.

Q. You mean to say that Darlington examined this letter of Robinson White and told you to acknowledge it before a notary and have it put of record? A. I repeat, that J. J. Darlington taught me to so act. He taught me, not in connection with this paper, but in connection with our supplemental letter, agreement of May 27, which was acknowledged before Rutledge Willson upon J. J. Darlington's introduction, and I at once put it of record.

Q. Mr. Darlington never saw this letter? A. No, sir; but it is quite analogous to the one of May 27, '92.

380 Q. And you were merely using your previous learning on the subject? A. Yes, sir.

Q. Have you among your papers this letter? A. I probably have. I keep every paper. They become scattered and I may not be able to put my hand on it as I do not recall having seen it recently. I have a great many papers.

Q. Do you think that the recorder's office would have added those words without your permission. A. I gave no authority of any thing.

Q. And you do not know how the words came there? A. I have no thought and never heard the question raised until this moment.

Mr. FORREST: The solicitors for the complainant suggest of record that there is no proof in the record that any words were added, or anything in that line were put to it.

Q. But you have no recollection of communicating with Robinson White that you were going to use his letter in that way, that you would have it recorded? A. No, sir. Why should I?

Q. You knew from the letter itself, that Robinson White had no thought of its going upon record?

Mr. FORREST: That is objected to as it is impossible for the witness to know what thoughts were in the mind of Robinson White.

A. I should never have consented to the change of trustees but for the spirit of that letter being carried out. I did not think of the Hubbard estate being so unwise as to act otherwise.

381 Q. Mrs. Hubbard, in her answer to the suit of George B. Starkweather against her known as equity No. 17,216, says that she denies that she ever authorized said Robinson White or any person to enter into any such agreement or that there was any

other agreement than that provided by the said trust. What have you to say to that, was she or not mistaken?

Mr. FORREST: That is objected to because there is no evidence in this case that Mrs. Hubbard ever said any such thing, or is there any proof of any such answer by Mrs. Hubbard.

A. Mrs. Hubbard was a gentle little woman with no knowledge of business whatever. If she ever signed such a statement, it was simply prepared by her attorney or some representative; and she did it without any real knowledge of its contents.

Q. Have you ever had any correspondence with her? A. I have had a great deal.

Q. Do you know her signature? A. I do.

Q. Look at that signature (handing paper to witness) that is signed to the paper from which I have been reading, and state whether or not it is here? A. That is her signature.

Q. You think, when Mrs. Hubbard was swearing, that she did not know what she was talking about? A. I simply know that any business proposition was not retained by her one minute; she was simply at sea; that is where my trouble began; that is the cause of my troubles with the Hubbard estate. Certain designing parties kept that thing in motion by the decade, they not having her interests and peace of mind at heart.

Q. She states further in her answer to that suit, that White had no authority whatever to perform any act or acts in regard to said indebtedness. You knew about that, didn't you?

Mr. FORREST: That is objected to as irrelevant and immaterial.

A. I know of having Mr. Buck's letters introducing me to Mr. White, and clearly setting forth that he had authority to act. I repeatedly conversed with Mrs. Hubbard—

Mr. LEIGHTON: The voluntary statement of the witness is objected to.

The WITNESS (continuing): And she showed an absolute lack of knowledge of how things were done. She was simply beyond her depth, being piloted by those whom she had been taught to trust.

Mr. LEIGHTON: The voluntary statement of the witness is objected to, and we shall move to strike it out.

Q. I suppose you read this answer of Mrs. Hubbard's after it was filed? A. Probably I did.

Mr. FORREST: The solicitors for the complainant will, at the proper time, move to strike out as incompetent and immaterial the cross-examination of this witness based upon any statements alleged to have been made by Mrs. Hubbard in her answer in any other suit, on the ground, among others, that that is not a proper method of cross-examining this witness, and Mrs. Hubbard is not a party to this cause; and that if necessary to the defendants' case, they can call her as a witness.

Q. In your answer to the interrogatory, "What about this statement of your having sunk some \$12,000 of Mrs. Hubbard's in some real estate schemes of yours." And you answered, "I never sunk money in realty." Do you mean to say each of your investments in realty were profitable and that you made money out of it? A. Substantially so; yes, sir.

Q. You made money out of the Crescent Heights, did you? A. That remains to be seen.

Q. Up to date you are \$10,000 better off than you were when you bought the property? A. I cannot say it.

Q. You got \$10,000 in cash, more than you put in it? A. I cannot speak on that point; it is a very complex transaction.

Q. Mr. Starkweather, you say that Mr. Jenner had access to the abstracts of two title companies of the District of Columbia for a period of three to five months. Did you ever show him yourself or deliver to him either, any certificates of title prior to his purchasing the certificates of stock in this company? A. I never handled the Columbia Title Company's abstract, and could never have delivered it to him; the Washington Title Insurance Company's abstract, I was the custodian of for a time, and probably showed it to him often.

I am sure from what he told me himself, of his access to the  
384 records of the syndicate, that he had them—had access to it.

He helped Johnson, straightened out his vouchers, &c. and discovered the defects which he told me of, probably before telling them to any other human being.

Q. Wasn't that after he had subscribed, however, for his shares of stock? A. No, sir.

Q. How do you know that date? A. I fix the date by the fact that I was in there almost every day, during the months of May, June and July, 1892; and I got possession of the Washington Title Company's abstract on May 28, and the other one, the Columbia Title Company's abstract was delivered to the trustees, July 19, 1900.

Q. Is it not a fact that the Washington Title Company's certificate was procured at the time you got the loan from Mr. Jenner? A. And later ordered another one, as I have the receipt to show.

Q. Did you, yourself show to Mr. Jenner the abstracts that you procured from the Washington Title Company before he had purchased the certificates? A. I certainly did if he was interested in the matter.

Q. Have you any recollection. That is an inference that you state, but have you any recollection that you did? A. Only that I took everything to him.

Q. You have no independent recollection of showing to him the abstract that you obtained prior to his purchase of this certificate? A. I would only say that he was my confidant in  
385 every way and I looked upon him as friendly.

Q. You are unable to state any more definitely than you have? A. No more.



Q. You have no independent recollection of what led you to order this certificate from the other title company. The certificate from the Columbia Title Insurance Company was procured by the trustees, Croissant and Johnson, and you had nothing to do with that? A. Only I consulted them as every body else did, who were interested in the syndicate.

Q. After it was issued? A. Yes.

Q. And that was after the stock had been subscribed? A. No, sir.

Q. Prior to it? A. I had the first shares which were issued. I was the only man the inventor in a way of that syndicate; and I think it was the last days of October or the first of November, that the first certificate was obtained, and the Columbia abstract, which all members of the syndicate looked up to had been in our possession over three months.

Q. As a matter of fact, the certificates were not issued until long after they were subscribed for, were they? A. Probably sometime after they were subscribed for.

386 Q. Croissant and Johnson had not ordered the certificate until the subscriptions were made up—not until the shares of stock were taken? A. Yes, sir; they ordered it on the 9th of May; they ordered it just one week after the first purchase—first agreement was made.

Q. You do not know of your own knowledge, Mr. Starkweather, whether Mr. Jenner ever saw the Columbia Title Company's certificate until after he purchased his shares of stock or not; do you? A. I know that he did not surrender his notes and release until months after the abstract was obtained. That was not his way of doing business.

Q. You have not answered my question? A. Only from what he told me. He reported to me every time I called there; we discussed every phase of the question. He was the only thorough man in connection with the syndicate.

Q. You say that Mr. Johnson practically put the Mindeleff trust on this property. What do you mean by that. Didn't you sign the trust and the Mindeleff note? A. I did; but it never would have been put on, but for J. O. Johnson's gentle persuasions: it was purely an act of good will, or folly, on my part.

Q. You said that in respect to this, at the time of the filing of the suit, 16,612, that it showed that there was a purchaser, at least, and that all the money put in was to be refunded. Who was that purchaser—yourself? A. As to the amended bill 16,612, filed May 6, 1896, showed there was somebody willing to take that off their hands.

387 Q. Who was that somebody? A. The complainant.

Q. Did the complainant at that time have the money to do it? A. I should have to refer to my bank balance to answer definitely.

Q. You say the affairs of the Crescent Heights syndicate were

practically forgotten. You are speaking of 1896. Do you mean that the syndicate shareholders took no interest in the affairs of the syndicate and regarded their money as lost that they paid in. What do you mean by that? Owing to this suit and the colored holdings the shares of the syndicate had no market value? A. I can say that the facts were these. The members of the syndicate, the persons who held shares—what I could hear or learn of their attitude was only one of absolute disgust. They considered that they had been imposed upon by the trustees, because those colored holders were not removed and were not subject to their control. No new purchasers could be obtained, as Mr. Johnson has informed me because of the filing of suit 16,612 and all these conditions arising from the presence of the colored holders there.

Q. Speaking of the purchase by Mr. Jenner from you of certificates in the Crescent Heights syndicate, you say two he exacted, they were not free sales, properly. What do you mean by that? Do you mean that he forced you to sell? A. He did the second time; I was most reluctant to part with it.

Q. Why did you part with it; why didn't you sell it to somebody else? A. Simply because the syndicate enterprise was in bad odor, as I have first explained, because of the existence of the colored holders there.

Q. And that suit? A. That suit had not been filed when Mr. Jenner bought those certificates. The suit was filed in 1895, and he bought one certificate in May or June, 1893, and the other by piece-meal; and the last section of it he obtained in September, 1894.

Q. Well, this was prior to the filing of this suit that the affairs of the syndicate were in such bad shape? A. Yes.

Q. And that is what you mean by, "two he exacted. They were not free sales to him." Could you go into the market and sell to any body? A. I could not speak of it with any body who was not already in the trouble.

Q. And they did not want to get in any deeper? A. Most people had said the one share was enough.

Q. Why didn't you take some of your other money and other security and assume this. Why did you let Jenner have them? A. The death of my friend Hubbard had paralyzed me; I was without funds. I saw that these properties would be valuable in the future, and I was powerless with my small bank balance at that time.

Q. Mr. Hubbard then was the party who furnished you chiefly with funds with which to conduct your real estate enterprises? A.

389 He was not; he began in 1886 and he ceased in 1887. He died in 1890. It was only a few months that he facilitated cash. I put in, in the spring of 1890, from a sale I had made, \$17,000 to my several land propositions of which Mr. Hubbard never knew any thing.

Mr. LEIGHTON: The voluntary statement on the part of the witness is objected to and we will move to strike it out as not in response to my interrogatory.

Mr. EVANS: It is directly responsive to the question of counsel.

Q. Why did you have recourse to Mr. Jenner for the purpose of borrowing money, if he treated you harshly. Why didn't you go to somebody else? A. I went to another party and paid as high as 480 per cent. Mr. Jenner was much more mild.

Q. With the class of securities that you had to propose, he was the easier man in the money market, is that so? A. He had been dealing in my line; I felt that he knew me and my purposes; and I could not, of course, understand his motive until this sale of February 3, 1898. I then began to feel wiser.

Q. Speaking of this blanket trust, you say, "I should have been a monster if I had not endeavored to secure Hubbard." You afterwards saw it was necessary to bring a suit against his widow, didn't you? A. Only technically.

Q. What do you mean by that? A. I mean that she was as innocent as an infant.

Q. You sued her? A. Technically. She knew nothing of it in reality. This is why there—

390 Q. You mean that she did not know that you had sued her? A. No.

Q. She did not know that she had signed the answer to your bill? A. No; only for the moment that she did it.

Q. She is not an idiot or lunatic? A. She is a woman without any business experience, a kindly disposed, pleasant little lady. I have seen others as helpless in business.

Q. You say you have been dealing with Mr. Jenner or his out-runner, born under the same foreign flag as Mr. Jenner. What do you mean by that, or who was that? A. Campbell G. Berryman, a British subject.

Q. He was your attorney before you knew he was Jenner's, wasn't he? A. In 1888. He first called at my office, and it is possible I sought him to negotiate some paper before I remember of meeting Jenner.

Q. Did Jenner ever say to you that Berryman was his agent and attorney? A. Yes, sir; discussed him most friendly.

Q. Discussed him before that time. So he was his agent? A. Yes, sir.

Q. You say you drew the check to your own order so that he (meaning Jenner), should not know where you banked. Then I suppose you endorsed it to your own order and gave the check to Jenner? A. No, sir. When I had money to pay to Mr. Jenner, I would draw to my own order and deliver the cash to Mr. Jenner.

391 Q. You mean you would go to the bank yourself and draw your money? A. I did invariably. I have looked in vain for a check drawn to his order at my bank.

Q. Why did you do that? A. I was afraid to let him know where I banked.

Q. Why? A. I did not know but that he would ask to see my bank book.

Q. You spoke of your habit or custom of tendering something to the auctioneer besides cash. Do you mean to say that you were in the habit of attending auction sales and giving or offering something instead of cash, for the cash deposit? A. Owing to circumstances which have been explained largely, I did acquire that habit in connection with the Stickney and Ashford trust at Spring street.

Q. You attended numerous sales and offered bids at the auctions and when the property was struck off to you, you tendered something in lieu of cash? A. Yes, sir; and that being made in advance frequently at the actioneer's own office, before driving out to the property.

Q. The sale would be postponed. Was this custom confined to your own properties or did it relate to other property? A. To that one property; I never attended auctions save where I was a mourner.

A. You spoke of an auctioneer who declined to receive your  
392 bid. Who was that? A. I said an attorney. It was Charles M. Armstrong.

Q. Because you had failed to make good a purchase? A. No, sir; because he knew I was short of funds.

Q. And you would not be able to comply with the terms of sale if it was knocked off to you? A. That is what he said, that I could not comply with the sale and carry out every condition; and so I found it expedient, on general principles, to have some one besides myself do the bidding. I do not think I ever bid at an auction.

Q. You always was represented by somebody else? A. Somebody else. As at that last auction of February 3, 1898, by W. N. Collins, the son of J. A. Collins, and not by one Silver as has been alleged.

Q. He was the party who bid for you at the sale of February, 1898? A. Yes, sir.

Q. Was it the same Collins who bid for you in November? A. His son.

Q. When you bid this property in through your agent, you knew that you did not have the money to pay for it? A. At which auction?

Q. At either of them, the sale of 1897 or 1898? A. I knew that I had securities worth, or at least had cost me many times over the amount bid; and I had implicit faith that I could negotiate  
393 them and have the cash by the time it was required.

Q. You failed to get other people to look at the value of your securities in the same light that you regarded them? A. A certain unfortunate telegram from Washington brought me home peremptorily, otherwise I probably should have consummated that

sale and have put the case where it belonged, with 16,612, by another amendment to that bill if necessary.

Q. As a matter of fact you did not have the money when you bid at this sale, and you were not able to procure it from such securities? A. I had the money at the sale of November 13, 1897, hundreds of dollars more than was required at that time.

Q. Why didn't you complete that sale? A. I had other calls for money in those days.

Q. But wasn't money available for that purpose? A. It was in my discretion.

Q. You know that if property is offered for sale at public auction and the sale is not completed by the purchaser it affects and injures the subsequent offer of the same property at public auction? A. I am not aware of that fact.

Q. You said that it was Mr. Jenner's habit when he knew of an auction sale in which you were interested; that he went around wherever he could find that you had obligations with anybody, and advised your creditors to foreclose? A. Yes, sir.

393½ Q. You know of no case in which he did that? A. Yes, sir.

Q. What? A. When Peter F. Bacon was proceeding to foreclose, and had waited repeatedly owing to circumstances—

Q. I am asking for the names of parties in regard to whom he did this? A. H. W. T. Jenner went and asked him to proceed with the foreclosure, much to the disgust of the good gentleman.

Q. Were you present when Jenner urged Bacon to foreclose? A. I was not.

Q. How do you know? A. Peter F. Bacon told me.

Q. That is the only way you know? A. The only way I know, confirmed by Jenner's hovering around this auction and he having conversations; yes, sir.

Q. What other case? A. Then Charles A. Baker, who testified here the other day.

Q. You know of no other except these two cases? A. Yes, sir; David C. Reinohl.

Q. I want to know what you know of your own knowledge?

Mr. FORREST: The solicitors for the complainant suggest that this is the only way that the witness could have any knowledge of it.

(Question not answered.)

394 Q. Of your own knowledge do you know of any case where he did as you have stated here? A. I hardly recall an auction where he was not present; and accompanying that fact were reports to me from friends.

Q. Mr. Starkweather, you have not answered my question. His presence at the sale would not necessarily show that he urged the sale to be made. I want to know whether you know of your own knowledge of any case?

Mr. EVANS: We object to the form of the question. If the solicitors for the defendants are to ask questions in this shape and then object to the answers given by the witness on the stand, it will be almost impossible to secure the information or proof he desires. If he will state to the witness what he means by "of your own knowledge," as for instance whether Mr. Jenner went with him to the several creditors and made these statements in his presence, why then the witness may be able to answer directly, yes or no.

A. Mr. Jenner was not so indiscreet as to attempt to influence my creditors in my presence.

Q. You know of no case of your own knowledge where he urged your creditors to foreclose?

Mr. EVANS: Objection is made to the question, as the witness has answered several times and stated several cases, namely, those of Peter F. Bacon, Charles A. Baker and David C. Reinohl; as cases in which Mr. Jenner endeavored to influence the said parties to foreclose against properties or securities of Mr. Starkweather.

395 If there is any doubt in the mind of the defendants' counsel as to the truthfulness of this statement of the witness, the parties named can be called by the defendants in rebuttal as witnesses.

WITNESS: I think I must have such but cannot recall it at this moment. That my impression is so strong, that I know that it rested on very permanent foundations.

Q. Mr. Starkweather, did Mr. Jenner ever attend any sales of any property except what was covered by what is known as the blanket trust? A. There were no other sales in the District of Columbia, hence he could not. That covered seven properties.

Q. You mean to say the blanket trust covered all of your real estate in the District of Columbia? A. All that came under the hammer, 200 acres.

Q. And those were the sales that Mr. Jenner attended? A. Yes, sir.

Q. He had an interest in those sales, did he not? A. I judge so from the fact that he was there.

Q. Well, probably part of this trust was resting upon Crescent Heights, is that so?

Mr. EVANS: The question is objected to as it is clearly shown by the record that the only amount loaned and upon Crescent Heights in the blanket trust, is the sum of \$5,000.

A. I do not see what the Crescent Heights Syndicate interest had to do with the blanket trust, as there were certificates enough  
396 to cover the entire blanket trust there, and no syndicate holder could possibly be a loser or suffer even if the whole blanket were to be paid by the syndicate.

Q. Is that the best answer you can give to that question? A. The agreement on which the Crescent Heights Syndicate rested,

required me in case the encumbrances on Crescent Heights were more than previously supposed, that I should return to the syndicate enough of my holdings of certificates to protect it; hence, I do not see what interest Mr. Jenner could have had as a member of that syndicate in following the flag on the blanket trust.

Q. If the offer had been realized by sales other than Crescent Heights to have paid the entire blanket trust, would not it have relieved the Crescent Heights property of the whole amount? A. It would without making a cent difference to any member of the syndicate.

Q. You speak of "the accuracy of my bold forecasts in regard to real estate values." What did you mean by that the Crescent Heights or the enterprise across the Eastern branch? A. My friend Hubbard came repeatedly through Washington, while seeking health, and I indicated my view of properties without specifying probably any property in which I had any interest, and telling what it would be worth in some months later. My predictions were more than realized. These properties sold for far more than I indicated that they would, and he came to have unbounded confidence in my real estate judgment.

397 Q. Did either of the enterprises across the Eastern branch succeed, or were they failures?

Mr. FORREST: That is objected to as immaterial and irrelevant.

A. As I have previously stated, the District Commissioners' reversal of their action, also the Pennsylvania railroad, and Congress; the party of whom a large tract was purchased and the death of my friend Hubbard were six features that prevented any result to that enterprise which has never had a chance in 18 years; I have one or two void agreements on which considerable money was paid, which prove that my forecasts of values were exceedingly correct and wise.

Q. Was the cemetery one of them? A. The Forrest Lake cemetery has nothing to do with what I have already spoken of; it is an enterprise which has received the highest commendations from some of the best citizens of Washington.

Q. You refer to it as an evidence of your bold forecast in real estate. A. I did not include it, but I will with your permission; and will add further that in so far as Forest Lake cemetery has been hung up, it has been the outgrowth of the Hubbard connection.

Q. You say you have always had an unconquerable aversion to business. What is your specialty—what do you delight in? A. Authorship and inventions, are my specialties.

Q. Have you ever invented anything? A. About forty things.

398 Q. This flying machine was one? A. That is one; yes, sir.

Q. Have you ever been a preacher of the gospel? A. Only as an amateur. I have been a preacher of righteousness for a great many years, in one way or another.

Q. Have you ever been a missionary? A. I have.

Q. How long? A. For some years.

Q. What part of the world? A. Well; missionary in South America, in Argentine.

Q. But your mind is largely occupied with inventions? A. Largely. I am the author of several books.

Q. I will show you a pamphlet that is entitled "Forest Lake Cemetery" which purports to have been signed by George B. Starkweather, comptroller, dated New York, June 21, 1902, and also has appended to it a suit,—George B. Starkweather against Reese Carpenter and others. I will ask you if that is a circular paper of your authorization and distributed?

Mr. FORREST: That is objected to as immaterial and irrelevant to the matters in issue.

A. I find no inaccuracy in this; it speaks for itself.

Q. Well, it was prepared by you or under your authorization and was published and distributed as such, was it not? A. It was. That suit was entered by my attorney Stephen M. Hove, and that statement to certain parties for the benefit of certain parties in New York, who had an interest in Forest Lake cemetery were entitled to know the condition of affairs; and I as comptroller and with the advice and consent of learned counsel, sent that pamphlet to those who were interested directly or indirectly in it.

Mr. LEIGHTON: I file that paper of the Forest Lake cemetery in evidence.

Mr. FORREST: To the offer of the paper in evidence and its being filed as such, objection is made on the ground that it is incompetent and further as irrelevant and immaterial to any issue pending.

Q. I also show you a paper purporting to have been signed by you, dated "62 Wall street, New York, June 26, 1902" and addressed to Deacon George F. Hills. I desire you to look at this and state if it is your authorship and prepared too by your direction?

Mr. FORREST: The question is objected to as immaterial.

A. (Witness looking at paper.) This was prepared by me and sent to a number of people in Hartford, who had a direct interest in the contents and who had a right to know the facts therein set forth. All of which, as I recall, I have scores of vouchers to substantiate the truth of.

Mr. LEIGHTON: I file that paper in evidence.

Mr. FORREST: Same objection to this as was to the other paper just offered.

400 Redirect examination.

By Mr. FORREST:

Q. Mr. Starkweather, when the proposition so made by you, contained in that letter or memoranda addressed to Mr. Jenner, un-



signed, when was it refused by Mr. Jenner? A. It was then and there declined.

Q. After he had declined it, when was it that you asked the return of that paper? A. He seemed to change his mind in that very minute. "Oh," says he, "let me see that, let me look at it"; that is why I let it out of my hand, thinking that he had reconsidered, and was about to act favorable upon it. It was that little ruse of his which caused it to have left my hand.

Q. After securing possession of it, you may state whether or not he again declined to accede to your request, or what did he do?

Mr. LEIGHTON: I object to that. That was all gone over before.

A. His attitude changed. He clutched to it, and refused most peremptorily to give it up, and I saw that only by a breach of the peace or by legal process could I recover it.

Q. When he refused to give it up, when was that as to point of time? I mean with reference to his refusing to accede to your request? A. Two minutes—five minutes; just a very short time.

Q. Now, the money spoken of in the proposition. What  
401 did you intend to do with it in the event that you succeeded in obtaining it from Mr. Jenner? A. To comply with the terms of the sale of November 13 and with the balance cover several other transactions of mine in New York or Maryland and of the District of Columbia.

Mr. LEIGHTON: The question and answer objected to. All those questions have been gone into fully.

Q. Mr. Starkweather, Mr. Leighton asked you on cross examination, referring to the statement contained in the pencil memorandum as to the value named for those four certificates which you proposed to purchase from Jenner, whether or not you did not mean to assent to the value of twenty-five cents put upon them by Mr. Jenner, and you answered that you could not state in reply categorically yes or no, but if you had to answer, you would say no, but you would like to explain. Now, I want to know what explanation you wish to make about that? A. From the standpoint of Mr. Jenner that a stranger had purchased the seven acres, I considered with the encumbrances and entanglements on the remainder, that those syndicate certificates were nearly valueless. From that viewpoint it is correct. From the other viewpoint of my being the original purchaser of those seven acres, I considered them just as good as ever. I knew that they were as good as ever; when I found from the public records that H. W. T. Jenner, a member of the syndicate, was the trustee for no innocent holders, but for other members of the syndicate.

402 Q. Was it upon that basis that you offered the face value for each of those certificates? A. Yes, sir, for every dollar.

Q. Now, you were also asked whether there was another agreement in writing, or any thing else in writing, respecting the release

of this Hubbard trust upon the payment of \$5,000, except this memorandum or letter of White, and I understood you to say that there was no other. I want to call your attention in that connection to the exhibit that you have filed in evidence here, being the letter of Mrs. Hubbard, saying that, upon the payment of \$5,000 the blanket trust would be released? A. I think you are entirely mistaken, as the record will show that I testified there were several letters beside personal correspondence from them.

Q. In the expression "several letters," do you mean to cover the Hubbard letter introduced by you? A. That was one of them.

Q. Now, questions were also asked you about Mr. Jenner's knowledge about these title certificates. At the time you gave him the trust of \$2500, was there an abstract of title obtained by him or by you? A. There was one obtained by me and submitted to him. I have submitted it here once already.

Q. You have spoken about sales or attempted sales that Mr. Jenner attended under advertisements of property covered by the blanket trust. Were any of the properties covered by the blanket trust sold out under the trust? A. Yes, sir; the one where I am charged or accused of squandering \$12,000. The fact is that there was a \$12,000 deferred payment. I managed to hold it together for a year or two by paying interest, hoping that the Hubbard estate would release or do something. Finally Mrs. Hubbard took that in her name, but it does not relieve me from the charge of having squandered her money, though I had nothing to do with it. One other tract was sold under the foreclosure, and the Hubbard estate received all over that original trust.

Q. Something was asked you about a receipt for a deposit at the sale of November 13, 1897. I show you a paper dated November 13, 1897, and purporting to bear the names of Duvall and Cole of Duncanson Brothers, auctioneers, and ask you where you got that paper? A. My bidder, J. A. Collins delivered it to me, I think November 14, and I have had it ever since.

Mr. FORREST: I offer that receipt in evidence.

Q. Something was said in your cross-examination about Mr. Robinson White. Have you in your possession any correspondence with either the Hubbards or with Mr. Buck in which any reference is made to Mr. Robinson White as attorney for the Hubbard estate? A. I have.

Q. I wish you would produce any such that you may have, so that I may show them to Mr. Leighton before I make any tender of them in evidence? A. I will.

Q. Mr. Starkweather, I show you two papers, one dated March 27, 1893, with the names of Herbert W. T. Jenner to it and one dated March 14, 1894, with the name George B. Starkweather written in it, and ask you whether or not those papers bear the original signatures of those two persons? A. They do.

Q. You know Mr. Jenner's signature? A. I do.

Mr. FORREST: I offer those two papers in evidence.

Q. I see that the two papers that I gave in evidence have reference to the certificate No. 11. I want to know from you if that is the certificate referred to in your testimony as having been finally purchased of you by Mr. Jenner? A. It is.

Recross-examination.

By Mr. LEIGHTON:

Q. You state that you offered to purchase of Mr. Jenner his shares of stock to get rid of him, and to pay him therefor \$10,000. You did not do it with the idea that the stock at that time was worth any such money? A. Intrinsically yes; equitably, yes.

Q. But in the market, no? A. Not in the market, where the facts were not known and adverse reports were current.

Q. You spoke of charges being made against you of squandering \$12,000 belonging to the Hubbard estate, charges made in the answer of Mrs. Hubbard to the case of Starkweather against Hubbard.

That is what you refer to? A. —.

405 Q. Does not the answer of Mrs. Hubbard in this case of Starkweather against her state in substance the same thing? A. If it states anything it confirms what I have stated, that she knew nothing of these matters, and whoever was guilty of making such a statement, seems to have known even less. I never saw the money, had nothing to do with it, and I simply paid the interest and taxes on that property for Mrs. Hubbard for years.

Mr. LEIGHTON: Counsel for the defendants states that he has produced in obedience to request from complainant's counsel the letter of October 12, 1897, signed by Thomas H. Gaither, trustee, directed to Andrew B. Duvall and C. C. Cole, trustees, authorizing them to sell.

Mr. FORREST: A certified copy of this letter is to be put in the record with the understanding that the original will be produced at the time of the hearing if desired.

GEO. B. STARKWEATHER.

Subscribed and sworn to before me this 20th day of May, 1904.

JNO. E. McNALLY,  
*Examiner in Chancery.*

WASHINGTON, D. C.,  
TUESDAY, May 31, 1904—3 o'clock p. m.

Met pursuant to agreement.

Present: Mr. Evans, of counsel for complainant; Messrs. Leighton and Donaldson, of solicitors for defendants.

406 Whereupon GEORGE B. STARKWEATHER, the complainant was recalled for further direct examination.

Mr. EVANS: I wish to state that at the close of the cross examination of this witness, the complainant in the case, by the counsel for the defendants, the defendants' counsel put in evidence as exhibits two papers, being printed pamphlets, one entitled a suit in equity and action at law, Comptroller's report to the shareholders of Forest Lake cemetery; the other being in the shape of a printed letter addressed to Deacon Geo. F. Hills, president, State bank, Hartford, Connecticut, and dated 62 Wall street, New York, June 26, 1902. The complainant's counsel at the time not having opportunity to examine these exhibits, were unacquainted with their contents, and since reading the same have decided that one or two points therein require explanation in order to render them intelligible as applying to this cause, and for this reason the complainant has been recalled for such explanation.

(To the witness:) I will call your attention to paragraph 1 in the first exhibit mentioned, being Defendants' Exhibit No. 1 which reads as follows:

"That the plaintiff is a citizen of the United States, and a resident of Richmond county, and State of New York."

I ask that you make such statement or explanation relative to that paragraph as you may deem proper? A. For several months prior to the instituting of this suit I had been in New York off and on in connection with one or two business matters which bade fair

407 to make me a permanent resident there. At the time of drawing this bill my attorney, Mr. Hoyer, assured me that my residence—I had a room on Staten island, Richmond county—would constitute a residence there, and cited certain precedents. And I heard the opinions of one or two other attorneys on the subject. I, therefore, felt assured that, according to New York laws, this was truthful and accurate, although my attorney is almost wholly responsible for its appearing as it does here. The defense challenged my residence, and the case was argued before Judge Keough.

Mr. DONALDSON: Any evidence of the witness with respect to the proceedings in that case is objected to, because the record is the best evidence of the matter.

The WITNESS: Judge Keough after considering the matter a fortnight ruled that I was a citizen of the District of Columbia.

By Mr. EVANS:

Q. Is there anything else in that paper which you care to explain?

28—1538

A. This exhibit seems not improperly made such in this case as both of these suits here detailed are the almost direct outgrowth of the treatment I have received at the hands of the defendants in this cause—Croissant, Johnson and Jenner. The paragraphs 42 to 47, inclusive, bear directly on the subject-matter of our present suit, and incidentally show where, on November 12, I obtained the cash concerning which Mr. Leighton, attorney for the defendants, has sought to learn something.

Q. What cash do you mean? A. The \$1,000 deposit of November 13, the day after at the auction sale of a portion of Crescent Heights.

408 Q. I show you the second exhibit referred to by me, being the Defendants' Exhibit No. 2, and ask you to read any statement there which you desire to explain, and then to make your explanation? A. "Language has always failed to express my gratitude to Mr. Hubbard, and I felt that ten for one was the least that would satisfy me in the way of financial return for his pecuniary favors alas! that this nine-fold increment which I was aiming to return, should have caused all these years of sorrow." This statement seems to explain, clearer than I have been allowed to bring it out in my direct testimony, the initial cause of the trouble with the Hubbard people. Had I consented to return the amount of the blanket trust with interest, there would have been no trouble or litigation. I felt that it would be unfair, and insisted on the literal ten for one which awakened the cupidity of others, and has precipitated this tangle of fourteen years.

Q. Who was to pay this ten for one which you speak of? A. I was to pay it to the Hubbard estate, and was in a position to do it, if they had acted as they should. They have prevented every sale for fourteen years. What I have just said is perhaps corroborated by a further statement here regarding myself: "Absolutely devoid of all love of money, yet so economical and absorbed as to be willing to subsist on a dime a day, if he could but be permitted to pursue the bent of his life—certain inventions."

409 On this point, the attorney for the defense has tried to ridicule certain aerial devices which have needlessly been introduced into this case. A further reference is made, "The leading invention referred to has been perfected after twenty-three years of persistent effort;" and a further reference to Whitney and Good-year, natives of my own State. The attorney for the defense has marked these as incredible, possibly. I wish to say that in foreign and domestic publications of the year 1882 can be found confirmations of the truth of what is here hinted at, and witnesses, explorers, geographers, officers of the United States Army, can be produced if necessary to further corroborate my statements in this direction. In the hands of a stranger, this letter might produce an erroneous and very unfavorable impression. None but those directly interested and cognizant of all of the facts referred to, can properly judge of this act. This letter would never have been written to Mr. Hills

if the defendants in the present cause had not visited Hartford to my detriment. Deacon Hills received this because he refused, after believing what the defendants had told him, among other things, that Crescent Heights was to be purchased for ten thousand dollars, and would not believe all the evidence that I could produce to show that it was \$75,000, but said it was fraudulent, joining with others there, innocently no doubt, and combining against me to the extent of preventing any of my old acquaintances in my native city recognizing me, I deemed it but just to myself and to my family to acquaint a number with the facts in the case. H. W. T. Jenner was one who had caused much of this trouble, and I felt it but right that he should have these copies, and sent them to  
410 him.

Q. You say that foreign and domestic publications will verify some of your statements. Be as precise as possible, and state to what publications you refer? A. In regard to inventions the Scientific American, of March, 1882, reference is made in the Royal Geographical society that I was elected a member in 1882, and am a life member of that society, which is the direct outgrowth of this pioneer invention which has never been abandoned and is being negotiated for and launched in these days. In regard to authorship—

Q. To what foreign publications do you refer? A. The Royal Geographical Society, of London.

Q. Is that a publication? A. It is a foreign society which has its proceedings and publications every month. I would like to add that it was through no effort or knowledge of my own that I was elected to that society or that my publications are discussed in the Encyclopædia Britannica and numerous other foreign publications, the existence of which even, in many instances, I am not aware of, the relevancy of this matter is to show the accuracy of my statement when I assert that I have no taste for business, and have been thrown into it only incidentally and from loyalty to my deceased friend Hubbard and his estate.

Q. You mention pioneer inventions. What do you mean by that? A. In the field of aeronautics, there are several prominent names to-day. I was in it working a decade or two before any of those people. I have never applied to the Government for a hun-  
411 dred thousand dollars, and I have not sought notoriety in any way, but I can deliver the goods without delay. I consider myself a pioneer in that line.

Q. That has reference, I suppose, to what is denominated in this case a flying machine? A. It is, although that is a term I never use.

Q. You have mentioned authorship, and was about to say something on that subject when I interrupted you with a question. Have you anything to say in regard to that? A. It seems a little remote from the case in hand, but Mr. Leighton caused me to introduce it. The Encyclopædia Britannica on several pages discussing

sex refers frequently to Starkweather, the complainant in this case, and to his "Law of Sex." I have written on the subject of aeronautics and published twenty odd years ago one or two books on that subject, and I have manuscript now on two or three other works in preparation. I am not a business man, but an author and inventor, if I am anything; yet I have no apologies to make for the business sagacity, or the lack of it displayed in my real estate transactions in and about the District of Columbia.

No cross examination.

GEO. B. STARKWEATHER.

Sworn to and subscribed before me this 31st day of May, A. D. 1904.

JNO. E. McNALLY, *Examiner*.

Mr. EVANS: During the examination of Mr. Starkweather in this cause, he was called upon to file as an exhibit a certain  
412 agreement between himself and Jessie L. Mindeleft. I accordingly file this paper and ask that it be suitably marked as an exhibit for the complainant, it being the original agreement.

Mr. LEIGHTON: The defendants object to the relevancy of this testimony, on the ground that it is incompetent, irrelevant, and immaterial, and they move to strike it out.

Mr. DONALDSON: We also object to the paper last offered in evidence, on the ground that that is incompetent and immaterial, no proper foundation having been laid for its introduction.

The paper is herewith filed marked Complainant's Exhibit No. —.

Mr. LEIGHTON: Are you absolutely through?

Mr. DONALDSON: Does this conclude the complainant's case?

Mr. EVANS: This concludes the complainant's case. We have no further evidence to offer.

Thereupon an adjournment was had without day.

JNO. E. McNALLY.

413

*Sub-rebuttal Testimony of Defendants.*

Filed May 23, 1904.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER ET AL.

vs.

HERBERT W. T. JENNER ET AL.

} In Equity. No. 20205.

WASHINGTON, D. C., May 21, 1904,

Saturday, at 10 o'clock a. m.

Met pursuant to agreement of counsel, to take testimony in rebuttal on behalf of the defendants in the above entitled cause.

Present: Edwin Forrest, Esq., of counsel for complainants, and B. F. Leighton, Esq., of counsel for defendants.

Whereupon HERBERT W. T. JENNER, one of the defendants herein, who has already been sworn and testified in his own behalf, was examined and testified as follows:

Direct examination.

By Mr. LEIGHTON:

Q. Mr. Jenner, Mr. Starkweather says that you charged him for moneys loaned at various times usurious interest, that is, interest in excess of what is allowed by law. State whether or not that is so?

Mr. FORREST: The solicitor for the complainant objects to the question on the ground that the same was brought out upon  
414 cross-examination as a collateral matter, and is therefore not a subject of rebuttal.

A. The statement is untrue.

Q. He also says that you saw the abstract of title to this property and knew the condition of the title prior to your purchase of your certificates. What have you to say about that?

Mr. FORREST: The question is objected to because the whole matter was gone into and the cross-examination of Mr. Jenner was met by the testimony of Mr. Starkweather, and it is not a proper matter of sur-rebuttal testimony, and for that reason is incompetent.

A. I saw a certificate of title relating to the seven acres at the time I made the loan of twenty-five hundred dollars. At the time I purchased the first two certificates I had no other knowledge of the title to the ten acres, which included the seven acres.

Mr. FORREST: The answer is objected to for the same reason, and a motion made to strike out the same, which will be called up at the proper time.

Q. When did you see the Columbia Title Company's abstract?

Mr. FORREST: Same objection.

A. I could not give the exact date. Some months after I had given the trustees, Croissant and Johnson, my notes for two thousand five hundred dollars, secured on the seven acres, and at least one-half of the cash payment for the second certificate.

Mr. FORREST: Answer is objected to for the same reason, and a like motion made.

WITNESS: I never saw that Washington Title Company's abstract.

415 Q. Mr. Starkweather testifies that you never distinctly testified—

WITNESS: That I *did*.

Q. (Continuing:)—that you did testify that there was no writing



in respect to those fragmentary lots between the colored holdings on Spring street. What have you to say to that?

MR. FORREST: That is objected to for the reason that it is not proper sur-rebuttal testimony, and therefore incompetent, and further, that it is not the subject matter of the controversy here at all, and therefore irrelevant.

A. I have examined the testimony filed in suit No. 16612, and I find on page 9 of my testimony that I testified that there was a written contract, and as to the contents of that contract, and that Mr. John O. Johnson, on page 84, also testified as to the contents of the contract.

MR. FORREST: The answer is objected to for the reason that it shows that the substance matter of it is incompetent, because if they have any such testimony, the record of it is the best evidence.

MR. LEIGHTON: I offer in evidence equity cause No. 17,246, and the pleadings and proceedings therein.

NOTE.—The exhibit referred to, being already on file in this court in the above equity cause, is filed in evidence herein by the examiner.

MR. LEIGHTON: That is all. That closes our case.

416 MR. FORREST: The offer of the papers in evidence is objected to on the ground that they are irrelevant and immaterial, and for the further reason that the contents thereof are not evidence until sufficiently proved, nor can the same be used in evidence until proved in the ordinary way.

Cross-examination.

By MR. FORREST:

Q. In 16612 was there any writing produced and put in evidence in respect of the fragmentary lots known as the colored holdings?

A. Mr. Fay who—

Q. Just answer my question, Mr. Jenner, whether there was any writing produced? A. The writing was produced, but the record of its filing as an exhibit is not clear.

Q. Do you know where that writing is? A. I do not.

Q. Did you see it? A. I saw it at one of the sessions at which the testimony was taken.

Q. And so far as you know, that writing is still in existence, is it? A. So far as I know.

MR. FORREST: The solicitor for the complainant objects to all evidence of the witness as given in his direct examination in sur-rebuttal, on the ground that it is in reference to a written contract, which is the best evidence, and its absence is not sufficiently accounted for to permit the production of secondary evidence.

417 Q. This abstract of title that you saw when this trust of twenty-five hundred dollars was given, embraced, did it not, the whole tract that was sold by Mr. Starkweather to the syndicate? A. No, sir; it was not an abstract but a certificate, and it only related to the seven acre tract.

Q. So far as you know, wasn't the whole ten acre tract conveyed to Mr. Starkweather by one and the same instrument? A. No, by different instruments.

Q. Have you any personal knowledge of that? A. Yes, obtained from the Columbia Company's abstract.

Q. And that abstract you saw when? A. I think anywhere from six to nine months after the formation of the syndicate.

Q. Well, the syndicate was not formed, was it, until after May 2nd, 1892? A. It was formed about that time.

Q. And wasn't the abstract of title obtained from the Columbia Company before July, 1892? A. I don't know. I did not see it until sometime after the trustees obtained it.

Q. Well, you were frequently in touch with the trustees of this syndicate respecting this property, were you not? A. To some extent. I was not fully informed about it at that time.

Q. Well, had you on May the 2nd, 1892, the date of this first contract, made known your intention to take part in this syndicate? A. It was probably a little later than that; perhaps within two months later than that date.

418 Q. Well, after taking this trust of twenty-five hundred dollars on this property, were you not advised by Johnson and Croissant, or Starkweather, of the contemplated purchase of this property by the trustees for the syndicate? A. Yes, but that was a long time after I made that loan.

Q. But was it not before the entering into a contract for the purchase of this property by Johnson and Croissant? A. I did not know Mr. Croissant at all in those days. Mr. Johnson said something to me about the third trust known as the Mindeleff trust, but beyond that I had no information whatever that I can remember.

Q. Well, you don't mean to say that you made a contract for the purchase of these syndicate certificates without knowing the condition of the title? A. I did, except so far that the trustee Johnson told me it was a fine business investment, and that everything was all in good shape.

Q. And didn't he tell you also that they had an abstract of title to the property, and that that abstract was all right? A. No, he did not; he did not have any abstract at that time.

Q. How do you know? A. Because he told me that an abstract had been ordered.

Q. What time, now, are you having reference to? A. At 419 the time within two months next following May 2nd, 1892.

Q. And you did not purchase or get these certificates at least until October or November, 1892, did you? A. I did not receive any certificates, certainly, but I made the purchase months be-

fore. I received no certificates—the certificates were not printed until long after the formation of the syndicate.

Q. Well, hadn't you seen the abstract of title, or known its contents, before you received the certificates? A. I saw the Columbia abstract before I received any certificate.

Q. Well, now, when did you see that? A. I could not fix the date. It might be anywhere from six to nine months after the formation of the syndicate.

Q. And before the issuance of the certificates? A. I do not remember how long it was after I saw the abstract of title that the certificates were issued.

Q. But when you made this contract for the purchase of these certificates, or subscribed for them, as part of the purchase money you put up as collateral security for your subscription this twenty-five hundred dollar note; is that right? A. No, I did not; I handed the notes for twenty-five hundred dollars to the trustee, Johnson, and he received them as cash

420 Q. As cash? A. Yes?

Q. And you also paid the balance of the purchase money for the certificates in cash, did you? A. I paid about one-half of the purchase money for the second certificate in cash at about the same time that I handed Mr. Johnson the deed of trust notes.

Q. Well, now, when did you do that—when you subscribed for the stock? A. No, but within a few weeks of that time. The final payment for my second share of stock was made at a later date.

Q. So as I understand you then, Mr. Jenner, without having before you a complete abstract of title to this whole ten acres, you made your agreements for the purchase of two of the certificates, and had practically paid for them before you saw such an abstract—is that right? A. That is right.

Q. Is that your way of doing business—purchasing an interest in property without knowing the condition of the title? A. I did so on that occasion, very much to my regret.

Mr. FORREST: I do not know that there is anything else that I want to ask.

Mr. LEIGHTON: That closes our testimony.

HERBERT W. T. JENNER.

Subscribed before me this 21st day of May, 1904.

P. H. MARSHALL,  
*Examiner in Chancery.*

421

*Decree.*

Filed Nov. 16, 1904.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER	}	Equity. No. 20205.
<i>vs.</i>		
HERBERT W. T. JENNER ET AL.		

This cause came on to be heard at the present term upon the pleadings and proof and was argued by counsel. Upon consideration whereof it is this 16th day of November, 1904 adjudged, ordered and decreed that the bill be dismissed with costs. From this decree the complainant prays an appeal to the court of appeals of this District which is allowed and the penalty of a bond for costs on said appeal is fixed at \$100.00.

THOS. H. ANDERSON, *Justice*.*Memorandum.*

December 5, 1904:—Appeal bond filed.

422

*Order Extending Time for Filing Transcript.*

Filed January 20, 1905.

In the Supreme Court of the District of Columbia, Jan. 20, 1905.

GEORGE B. STARKWEATHER	}	In Eq. No. 20205.
<i>vs.</i>		
H. W. T. JENNER ET AL.		

For good and sufficient cause shown and appearing to the court, the time for filing the transcript of record herein with the clerk of the court of appeals, be and the same is hereby extended to the fifteenth day of March, 1905.

THOS. H. ANDERSON, *Justice*.

423

*Order Extending Time for Filing Transcript.*

Filed March 15, 1905.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER, Complainant,	}	Equity. No. 20205, Docket No. 46.
<i>vs.</i>		
H. W. T. JENNER ET AL., Defendants.		

Upon application of the complainant through his solicitors of record, and for good and sufficient cause shown to the court, it is



ificate setting forth that the party in whose favor the certificate was issued had contributed said sum of \$2500 for the purchase of the real estate aforesaid, and was entitled to a one-thirtieth undivided interest therein, and declaring that the said trustees aforesaid held said real estate upon certain trusts, and the complainant annexes hereto as part hereof a true copy of the certificate so issued and the same is marked as Complainant's Exhibit "A."

The complainant further says that the said Exhibit "A" contained the full trust upon which said property was held by the said defendants trustees and that outside of the agreement and understanding appearing upon the face of said certificate there were no other  
426 terms or conditions upon which said real estate was held by the said trustees or any power or authority to act concerning the same.

Fourth. That the complainant is at present the owner in his own right of seven of the thirty shares into which interests in the said property was divided and certificates issued by the said defendants Johnson and Croissant as aforesaid, and which were taken by the complainant as part purchase money of said property.

Fifth. That prior to the ownership by the complainant of the property hereinbefore referred to, the complainant's immediate grantor one Lewis made a subdivision of the said property into lots 1 to 44 both inclusive and by such description conveyed the same to the complainant, and by such subdivision said property has ever since been known and certain lots as therein described conveyed as in said subdivision set forth, and the complainant annexes hereto as part hereof, and marked Exhibit B, a true copy of so much of said subdivision so made by the said Lewis as shows lots 1 to 24 both inclusive, the original of which is of record in the office of the surveyor of the District of Columbia in County Book 6 at folio 113.

Sixth. That the property sold by this complainant to the said defendants Johnson and Croissant, trustees as aforesaid, covered about ten acres of ground, seven acres of which were in the rear of the said Lewis subdivision, and to secure the deferred purchase money, and other expenditures, there was a deed of trust given upon the said seven acres, as he is informed and believes,

and therefore so avers the fact to be, but the said subdivi-  
427 vision lots 1 to 44 both inclusive were left free and unincumbered and, as this complainant is informed and believes, and therefore avers the fact to be, no one on behalf of said certificate holders was authorized and empowered to incumber in any way the said subdivision lots aforesaid, and there was no such authority given, as he is informed and believes and therefore avers, the fact to be, to the said trustees Johnson and Croissant, yet, notwithstanding the premises aforesaid the said defendants Johnson and Croissant by a certain deed or instrument by them executed and dated the 28th day of January, 1898, and recorded among the land records of the District of Columbia in Liber 2279 at folio 259 *et seq.*, claimed and pretended to convey to the defendants Giesy and

Warner certain property belonging to the said syndicate to secure the defendant Jenner in the sum of \$715.35 evidenced by the promissory note of the defendants Johnson and Croissant; to secure the defendant Spear in the sum of \$2378.79 evidenced by a like promissory note, and to secure the defendant Henry J. Gross in the sum of \$551.12 evidenced by a like promissory note, and all of said notes being payable one year after date; but whether the said sums represented by the said promissory notes were *bona fide* indebtedness of the property owned by said syndicate this complainant is not informed, and asks for discovery by the said defendants of the nature of the transaction whereby any such indebtedness was ever incurred for and on account of the said property and by what authority, if any, the said defendants, trustees as aforesaid, claimed to incur any such indebtedness, if the same was truly incurred, as well as for what right or authority they claimed to execute the alleged deed of trust as security for the said alleged indebtedness.

Seventh. This complainant further says that the said defendants Giesy and Warner as trustees had advertised in a newspaper published in this city and District the property named and described under the alleged deed of trust aforesaid, as is claimed therein, at the "request of the holders of the notes secured thereby," the defendants Jenner, Spear and Gross as this complainant is informed and believes and so avers, and said sale is advertised to take place at five o'clock p. m. on Tuesday April 18th, 1899.

This complainant further says that the said property so advertised is so vaguely, uncertain and indefinitely described as to be impossible to locate upon the plats, maps or records; and no one could purchase the same at such sale, as this complainant is informed and believes, with any correct knowledge of the property he was buying; and it is apparent, in any event, from a perusal of said advertisement that an inspection and comparison of certain conveyances referred to therein would have to be made in order to get at the property referred to in such conveyances; that no part of the property so alleged to have been conveyed is described in said advertisement, but only a reference to certain conveyances to certain grantees by liber and folio without giving the names of the grantors, the dates of such conveyances or any reference to the property whatever said to have been conveyed.

The complainant further says that the said advertisement refers to certain parts of lots 6 B, 7 B, and 8 B without referring to any record or plat indicating the particular parts of the lots referred to.

Eighth. The complainant further says that in no part of said advertisement aforesaid, a copy of which is hereto annexed as part hereof and marked Complainant's Exhibit "C" does it appear how many feet or acres are embraced in the property alleged to be described in the said exhibit, and although this complainant is interested in the property owned by the said syndicate aforesaid to the extent named and knows the location and boundaries thereof it would be impossible for him to say how much ground was embraced

in the said advertisement or the property therein referred to as to its metes and bounds; and while this complainant has reason to believe that the property intended to be described is in part the lots shown as Nos. 1 to 24 both inclusive on the said plat hereto annexed and the other twenty lots from 25 to 44 both inclusive a part of said subdivision, yet he cannot tell with any certainty or accuracy for the reasons hereinbefore set forth as to the faulty description of said property, and he further says that if it be true that said property embraces the lots last herein mentioned then a proper and true description thereof should have been put in said advertisement by lots as on said described plat described so that the said property could be easily identified and no one be misled who intended to purchase the same, or those interested being notified by such advertisement that property in which they had an interest was to be sold and the only way that he could identify it is by the fact that on inspection of the alleged deed of trust the defendant Jenner appears as the holder of one of the notes secured, and he is the same Jenner

430 with whom this complainant heretofore had litigation in the supreme court of the District in case known as equity No. 16,612 and there is also a suit now pending between complainant and defendant Jenner with respect to a certain portion of the property owned by the said syndicate, said latter case being known as equity No. 20,205. To which said causes this complainant begs leave to refer at the hearing hereof, if deemed by him necessary.

The complainant further says that his main reason for believing and asserting that the property so described is as subdivided into lots 1 to 44 inclusive, property of the syndicate in that the names mentioned in said advertisement as having been conveyed certain persons of said property are those of persons who purchased lots of said subdivision on Fourteenth street and Spring street.

Ninth. The complainant further says that the said defendants Jenner and Spear are also owners of interests in the said syndicate, the defendant Jenner being the person most largely interested, and this complainant charges, on information and belief, that it was the object and purpose of the said defendant Jenner to so have said property advertised in the faulty manner in which it is so described with the intent and purpose to mislead those who might be interested therein and for the avowed purpose of purchasing the same at any such sale and for an amount wholly disproportioned to its true and actual value.

The complainant further says that his business has been such within the past few months as to require the greater part of his time and attention outside of the District of Columbia and during 431 a portion of the past few months he has been indisposed and unable to attend to business, and it was only during the past few days that his attention was called to the said advertisement; that although he was, as hereinbefore stated largely interested in the property held by the said defendants Johnson and Croissant as trustees for said syndicate he was not notified or called upon to



meet any assessments or dues on account of the alleged indebtedness set forth in said deed of trust, nor was any demand in any way made upon him as required by the agreement under which the parties interested in said property acted.

The complainant further says and charges that the said defendants Jenner and Spear have conspired, colluded and confederated together for the purpose of having a sale made of said property, without a proper description thereof as subdivided, and the said defendants owning and controlling a majority of the stock and interest in said property prevented by such conspiracy, collusion and confederation with the said trustees Johnson and Croissant from having assessments made, as required under the agreement aforesaid, upon the different shares and certificate holders for collection of any debts of said syndicate or association, and especially the alleged debts represented by said promissory notes.

Tenth. The complainant further says that to permit a sale of said property described in said advertisement as threatened would work an injury and hardship upon him and would seriously sacrifice his interests therein, and the effect of such sale would practically  
432 be to destroy the interests of those owning said shares or interests in said syndicate and place the entire interest in the possession ownership and control of the said defendant Jenner. That the value of the interest of the complainant in said syndicate property is \$20,000 which would be seriously impaired if not destroyed by such sales.

The premises considered he therefore prays:

1. That process may issue in due form directed to the defendants commanding them to appear at a day named to answer the exigency of this bill of complaint.

2. That the defendants Warner and Giesy and their agents and auctioneers may be restrained, until the further order of the court from selling or attempting to sell the property referred to and set forth in the said advertisement.

3. That upon a hearing the court will perpetually enjoin and restrain the said defendants Warner and Giesy from selling or attempting to sell said property set forth in the said advertisement by virtue of the said deed of trust.

4. That in the event that said court should in final hearing be of opinion that said property should be sold under said court then that a decree may be made requiring said trustees to sell the same according to the subdivision lots.

5. That the complainant may have such other and further relief in the premises as the nature of the case may require.

The defendants to this bill of complaint are Brainard H. Warner, S. Herbert Giesy, John O. Johnson, John D. Croissant, Ellis Spear, Herbert T. Jenner and Henry J. Gross.

GEO. B. STARKWEATHER,

R. P. EVANS,

E. FORREST,

*For Compl't.*

433 George B. Starkweather being first duly sworn according to law deposes and says; that he is the complainant in the above entitled cause and has read over the above bill by him subscribed and knows the contents thereof; that the facts therein stated of his own knowledge are true and the facts therein stated on information and belief he believes to be true.

GEO. B. STARKWEATHER.

Subscribed and sworn to before me this April 17th, 1899.

JOHN H. O'DONNELL,

[SEAL.]

Justice of the Peace, D. C.

434

EXHIBIT A.

Filed Apr. 18, 1899.

MAY 2 '92.

No. —. Whole Number of Interests, *Thirty* Shares. \$75,000.

*Syndicate Certificate.*

Know all men by these presents, that we, J. D. Croissant and John O. Johnson, trustees, as joint tenants in fee, under certain deeds from *Geo. B. Starkweather and Emma*, his wife, and recorded in the land records of the District of Columbia, hold the real estate situate in the District of Columbia, and designated as follows, to wit: All of those certain pieces or parcels of land and premises known and distinguished as and being the 400,000 square feet, more or less, known as Crescent Heights, at the junction of Fourteenth street (extended) and Spring street, Mt. Pleasant, D. C.

Whereas, ——— has contributed \$2500 of the sum expended for the purchase of said real estate, and is, therefore, entitled to one-thirtieth aforesaid undivided interest in said real estate:

Now, therefore, in consideration of the premises and said payment, receipt whereof from said ——— is hereby acknowledged, we, the said J. D. Croissant and J. O. Johnson do hereby declare that we hold the said real estate upon trust as follows, for said ———

435 ——— heirs and assigns, to the extent of one-thirtieth aforesaid undivided interest; that is to say: In and upon the trusts set forth and declared in said deed.

It is further understood and agreed as follows:

The trustees shall be entitled to and be allowed a joint commission of three per cent. on all receipts except from assessments heretofore or hereafter paid by members of the syndicate, and from loans negotiated by the trustees.

This declaration and the interest hereunder shall, at all times be subject to assessment for its proportionate part of money necessary to pay the expenses incurred in the execution of the trusts as provided in the deed to said trustees, hereinbefore recited, which said

assessments shall be payable within thirty days after written notice thereof shall have been mailed, postpaid, to the person assessed, or personally served upon him, and in default of such payment the said trustees, or the survivor of them, are hereby authorized to sell the interest of such person so in default, either at public or private sale, after such notice and upon such terms as they or the survivor shall deem best, and to transfer such interest to the purchaser, free from liability on his part, for the application of the purchase money. In the event of any such sale the proceeds shall first be applied to payment of the assessments, in default, with interest at 6 per cent. from date of notice until paid, and the surplus shall be paid over to the owner of such interest, his heirs or assigns.

This declaration and the interest hereunder may be transferred by writing, under seal, and upon such transfer the assigned declaration shall be surrendered to the trustees, and a new declaration issued in the name of the purchaser, and the trustees shall not be bound to take notice of the rights of a transferee who fails to surrender such assigned declaration and to procure a new one in his own name.

Any transferee of such declaration, and the interest hereunder, shall thereby be subrogated to all the rights and subjected to all the liabilities of the original holder; and the said ——— as evidence of the acceptance of this declaration, and to confer all necessary power upon said trustees, and the survivor of them, in the premises, as above set forth, has hereunto set his hand and seal the day and year last herein written.

Witness our hands and seals, this — day of —, 189 , at Washington, D. C.

Signed, sealed and delivered in presence of—

— —. [SEAL.]  
— —. [SEAL.]

STARKWEATHER }  
VS. } In Eq. No. 20360.  
WARNER ET AL. }

[Written across the face:] Sample copy.

437

*Memorandum.*

The deed of trust filed as an exhibit in equity cause No. 20360 and called for in the order to the clerk for the preparation of transcript filed by the attorneys for the appellant, is missing from the files.

438 *Testimony on Behalf of Defendants.*

Filed November 8, 1900.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER	} Equity. No. 20360.
vs.	
BRAINARD H. WARNER ET AL.	

FRIDAY, August 10, 1900, at 1.30 o'clock p. m.

Met, pursuant to agreement, to resume the taking of testimony on the part of the defendant, in the above entitled cause.

Present: Edwin Forrest, Esq., solicitor for the complainant, and S. Herbert Giesy, Esq., solicitor for the defendants.

Whereupon ELLIS SPEARE, a witness of competent age, being duly sworn, being produced as a witness on the part of the defendants, was examined and testified as follows:

Direct examination.

By Mr. GIESY:

Q. General Speare, I will show you the deed of trust, the subject of litigation in this case, which states that a note for \$2,378.79, payable to you, is secured by this deed of trust, and ask you to state what was the consideration for that note? A. The note was given on account of certain payments made for the Crescent Heights syndicate. From time to time payments became due on the Crescent Heights property owned by this syndicate, and at a meeting of the shareholders of the syndicates, we raised money on notes for the purpose of meeting the interest due. Some of those notes were made by Croissant and Johnson, trustees—made by one and endorsed by the other—and some of them were made by Croissant and Johnson and endorsed by me. Of the notes made by Croissant and Johnson and endorsed by me, the amount was something more than \$800; between eight and nine hundred dollars. The other notes were of the amount of \$1,200 or over, I do not remember precisely the amount. Then in addition to all this, there was something due on taxes, and this note was given to cover these matters. The notes of Croissant and Johnson were over-due, and the bank was pressing for payment, and I paid the notes which I had endorsed. So this note for twenty-three hundred dollars secured by the deed of trust referred to in the question was given for these matters which I have specified, and when the note was paid, I was to see that Croissant and Johnson were paid—in short, that the claims which I have specified should be satisfied.

Q. General, what bank held these notes that you speak of, amount-

ing to eight hundred dollars and twelve hundred dollars—these notes? A. The Columbia national bank.

Q. Did you deliver the twenty-three hundred dollar note to that bank? A. Yes, the bank was to have the custody of that  
440 note, and I turned it over to Mr. Bailey, the vice-president, then acting as president—well, I turned it over to the bank, and my recollection is that I turned it over to Bailey personally; but I will be certain and say I turned it over to the bank.

Q. At the time of the making of this note, was it the intention of the trustees, do you know, to pay their obligations to the Columbia bank with that note, as well as to discharge your endorsement? A. Yes, that was the intention. My understanding was that the money paid, or the indebtedness incurred by Croissant and Johnson, as in my case, was for the benefit of the syndicate; in fact, the money was raised for meeting the necessary obligations, meeting the interest on the notes which were secured by a deed of trust on that property.

MR. FORREST: To all of the above testimony as given by the witness with reference to what has been denominated by him as certain indebtedness due by the property, or claimed as due by the property, objection is made on the ground that the indebtedness so called was not incurred by the trustees or those acting for or on behalf of the syndicate, or claiming so to act, in the manner authorized by the deed under which the trustees acted, or the authority conferred on such trustees by those holding shares or undivided interests in said property.

Q. General, can you state—you have rather anticipated this in your answer, but as I want to get it from you straight, I will  
441 ask you this question—can you state for what purpose the indebtedness represented by the several notes in the Columbia bank, including those endorsed by you, was incurred by the trustees of the syndicate? A. The money was raised to pay interest on notes secured upon the property which the syndicate held,—I mean the Crescent Heights property—prior to the acquisition of the property by the syndicate. It was necessary to pay the interest or have the property sold. I have a distinct recollection myself of paying the interest, amounting to something over two hundred dollars, on notes to the amount of between seven and eight thousand; but I personally had nothing to do with the other payments. I happened to make that payment for Mr. Johnson, who was out of town.

MR. FORREST: The answer of the witness is objected to as incompetent for the reason that the necessary and sufficient legal foundation has not been laid to show any authority whatever in the trustees to incur any such indebtedness referred to in the answer. And to so much of the answer as refers to the payments made personally by the witness, objection is made on the ground that the same is irrelevant, and throws no light whatever upon any issue in this case, or any burden imposed upon the witness to personally see to the

payment of the same, for which the interests of the complainant in this matter should be held in any wise responsible to the extent that he holds said interest in the syndicate property.

By Mr. GIBBY:

442 Q. In the answer filed in response to the rule to show cause issued in this cause, the statement is made that "The trustees did lay an assessment on the syndicate shares of stock of to wit \$170. per share with which to pay the notes secured by the deed of trust under which the present sale is to be made."

Will you tell us what you know in regard to that assessment?

Mr. FORREST: That question is objected to unless the matter sought to be elicited by the question is of the personal knowledge of the witness, second: because there is better evidence in existence than the testimony of the witness, to wit, the testimony, if any, of the trustees who were, if anyone was, authorized to make the assessment, and thirdly: because of the reasons stated, the answer sought by the question must necessarily be of a hearsay character, as far as the complainant is concerned.

A. I received a notice from the trustees of such assessment, and the amount assessed was, according to the best of my recollection, about that sum. My present recollection is that it was a little more, something over \$170; but I am not very positive about that.

Mr. FORREST: The answer is objected to as irrelevant and immaterial, so far as the interests of the complainant are concerned, and as not responsive to the question.

Q. Did you get a written notice of that assessment? A. Yes.

Mr. FORREST: The answer is objected to unless the notice is produced, that being the best evidence.

443 Q. Have you got the written notice? A. No, I did not preserve it. My recollection is that I called Mr. Jenner's attention to it. I made search amongst my papers, but have been unable to find it.

Q. You have a distinct recollection of getting such a written notice? A. Yes.

Q. Did you pay your assessment, General Speare? A. No.

Mr. FORREST: Objected to as immaterial and irrelevant.

A. (Continuing): I was willing to pay if the others would.

Q. You were willing to pay up if others would. Did the other members of the syndicate decline to pay? A. I so understood.

Mr. FORREST: That is objected to as well as the answer, as clearly incompetent.

Q. In paragraph 9 of the bill of complaint in this cause, filed by George B. Starkweather, he alleges as follows:

"The complainant further says and charges that the said defendants Jenner and Speare have conspired, colluded and confederated together for the purpose of having a sale made of said property without a proper description thereof as subdivided, and the said defendants owning and controlling a majority of the stock and interest in said property prevented by such conspiracy, collusion and confederation with the said trustees, Johnson and Croissant  
444 from having assessments made, as required under the agreement aforesaid, upon the different shares and certificate holders for collection of any debts of said syndicate or association, and especially the alleged debts represented by said promissory notes."

Is that true?

MR. FORREST: That is objected to because the matter referred to is not in issue in this case, the charge having been made in the opening in the bill and admitted in the answer, there being no denial thereto, and therefore it is not in issue.

MR. GIESY: If you will read the answer, Mr. Forrest, you will see that it is denied.

A. No.

Q. I hand you a circular letter signed by yourself and Herbert W. T. Jenner, which has been produced as an evidence of conspiracy by Mr. Starkweather, and I ask you to state what was the purpose and intent of that letter?

MR. FORREST: The question is objected to, first: Because the purpose and object of the introduction of the circular in evidence is shown best by what it purports to state, and second: Because the circular is in writing, and its object and purpose is plainly stated upon its face, is intelligible, and does not need any addition thereto by the testimony of one of the authors of it.

A. I can only say for myself that my object was to care for the interests of all concerned in the property of the syndicate.  
445 We gave the parties the information contained in the letter, and hoped to get them do something in the matter.

MR. FORREST: The answer of the witness is objected to for the reason that the letter very intelligently speaks for itself.

Q. The letter, as I understand it, General Spear, was an effort to preserve the syndicate?

MR. FORREST: I object to the question as the witness has already testified about the letter, and the question is improper in form as to what counsel may have understood, the answer itself being the best light upon that subject.

A. Yes.

Q. Were you considerate of the interests of Mr. Starkweather at that time in the syndicate?

Mr. FORREST: Objected to as immaterial and irrelevant?

A. Certainly.

Cross-examination.

By Mr. FORREST:

Q. General, as I understand it, you were interested in this syndicate to the extent of how many shares? A. One share.

Q. Did you become interested at the time of the origin of the purchase of this property? A. I did.

Q. And were from that time down to the present? A. Yes.

446 Q. In the management of this syndicate, Mr. John O. Johnson and Mr. John D. Croissant were appointed trustees, as the agents of the syndicate; is that right? A. Yes.

Q. And so far as you understood the matter, and so far as the matter stood, they were the agents representing the syndicate? A. Yes, they held the property for the syndicate.

Q. Now this note to which your attention has been called, in the sum of \$2,378.79, as shown upon the face of this trust deed dated January 28, 1898, is signed by Johnson and Croissant, trustees, and the proceeds are made payable to the—in what way?

Mr. GIESY: The question is objected to as being misleading and confused.

Q. (Continuing:) In other words, General, the trust, as you recall, recites an indebtedness to you of \$2,378. As a matter of fact, were the trustees indebted to you in that sum? A. No.

Q. Or were you made merely an accommodation payee of the note? A. Yes, I was to pay over the twelve hundred dollars, or about that sum—I do not mean to say exactly to Croissant and Johnson—and eight hundred dollars or more to myself, for the notes which I had endorsed and which I paid. That was the understanding in the matter. And the note was put into the bank—into the

447 custody of the bank—subject to the order of both parties. The bank was to hold the note until Croissant and Johnson on the one hand and myself on the other, should agree to take it out.

Neither was to have custody of it.

Q. And as I understand it, you have personally paid in the neighborhood of eight hundred dollars on account of that twenty-three hundred dollar note? A. Yes sir.

Q. Do you know who is the holder at this time of the twenty-three hundred and seventy-eight dollar note? A. I presume it is in the bank still.

Q. Did you ever hear that a Mrs. Davis was an owner of a greater part of it? A. I heard recently that Croissant and Johnson had sold their interest in the note, but I have no knowledge of that.

Q. But in the event of the collection of that note, General, you have an interest to the extent of your payments in the proceeds of that note, haven't you? A. Yes sir. Let me say that the note was



made payable to me originally, and the deed of trust was made without my knowledge. It was not at my suggestion that that was done. The papers were made out and I was advised of it afterwards. I assented to it.

Q. This assessment circular that you speak of, General, when did you see it? A. About the time of its receipt; I think it must have been in 1898, possibly later.

Q. Was it a printed circular, or a written one, or typewritten? A. A typewritten one, I think.

448 Q. Did you ever see one in the hands of any other member of the syndicate? A. No, I have no recollection of seeing it.

Q. When did you last see it, shortly after its receipt by you? A. Yes.

Q. That assessment, whatever it was, you failed to pay. And was this deed of trust the next thing that was done, as far as you recall? A. I do not recall any other—anything else done; in the order of events the deed of trust was certainly subsequent to that notice.

Q. This circular to which your attention has been called sets forth the facts as you understood them, at the time of its issuance, with the lights then before you? A. Yes.

Q. Do you recall now whether the circular was gotten up by you or by Mr. Jenner? A. By Mr. Jenner, to the best of my recollection.

Mr. GIESY: The question is objected to as intending to mislead the witness.

Mr. FORREST: Well now, in the first place I could not mislead the General, and—just read the question?

The question was repeated by the examiner as follows:

“Q. Do you recall now whether the circular was gotten up  
449 by you or by Mr. Jenner?”

The WITNESS: I understand by that a circular letter signed by Mr. Jenner and myself.

Mr. GIESY: But I thought you were testifying about the assessment.

Mr. FORREST: No, I asked him about the assessment, and now I am asking him about the circular.

The WITNESS: No, I had finished about that. I will say that I may have made some suggestions.

Q. This deed of trust has been shown you. Let me ask you to look at the other parties who are secured thereunder, and tell me if you have any information for what purpose those notes were given? (Handing deed of trust to witness.) A. (After examining same.) You mean those parties outside of the twenty-three hundred dollars?

A. Yes. A. I have no knowledge on that matter.

Mr. FORREST: That is all I have to ask you, General.

ELLIS SPEAR.

Subscribed before me this 11th day of August, 1900.

J. ARTHUR LYNHAM, *Examiner*.

450 Whereupon S. HERBERT GIESY, being first duly sworn, testified as follows:

I have been attorney for the Crescent Heights syndicate ever since the filing of the suit 16,612 in equity. I was called upon by them to prepare the deed of trust, the subject of this controversy, and to ascertain the amount of their indebtedness. I went over the whole matter and found that the note in the Columbia national bank, and the taxes then due upon the property, amounted to \$2378.97, which was included in the note given to General Ellis Spear; that the indebtedness of Mr. Jenner for various expenditures on behalf of the syndicate, included the taking up of one note which had been taken up at the Georgetown bank and amounted to \$535.35, the amount of the note made for him. Prior to this time, I had been given for my services in this case, a note made by the trustees of \$500, the interest upon which was the difference between that amount and the note given to Henry J. Gross. I had sold that note to B. H. Warner & Company for part cash and part payment of interest due on a house, the beneficiary of a deed of trust on which that property was represented by them; and I was directed to make the note payable to Henry J. Gross. The one hundred and eighty dollars was my bill against the syndicate at the time of the making of the deed of trust, for all legal services up to that date, and Mr. Jenner directed me to make the note to him, and he would purchase it, which he did, giving me his check for the note. The syndicate desired that I, as their attorney, should represent the syndicate as trustee in the deed  
451 of trust, and as the Columbia national bank was the largest creditor, holding notes amounting to over \$2,200, they were asked who would satisfy them as a trustee, and after a consultation with them, Mr. Brainard H. Warner was termed as the other trustee, which consultation, however, I did not have myself, but was informed of the result of it by the different members of the syndicate.

Mr. FORREST: I object to so much of the testimony as states what the witness may or may not have found as the result of his examination into these matters, as being incompetent testimony. I also object to so much of his testimony as states his services in these different law controversies between Mr. Starkweather and the other members of this syndicate, as not properly a charge against Mr. Starkweather's interest. I also object to so much of this testimony as states what he was directed to do, as not being competent testimony in the absence of Mr. Starkweather. I also object to what the witness has said took place in the conversations with the defendant, Jenner, as being purely hearsay testimony. I also object to the testimony as to consultations with officers of the Columbia national bank, as to who should or should not be made trustee in conjunction with the witness, as being consultations or conversations which took place according to the witness' own testimony, in his absence, and therefore his statements in relation thereto are purely hearsay.

S. HERBERT GIESY.

Subscribed before me this 6 day of November, 1900.

J. ARTHUR LYNHAM, *Examiner*.

452      MR. GIESY: I wish to offer in evidence a short copy of the West End National Bank *vs.* George B. Starkweather, and ask the examiner to mark it.

NOTE.—And the same is filed by the examiner marked Exhibit S. H. G. No. 1.

MR. FORREST: That is objected to as immaterial and incompetent, and as not throwing any light upon the issues in this controversy.

At this point an adjournment was taken until Wednesday, the 17th day of October, 1900, at 3 o'clock p. m.

453

EXHIBIT J. E. M. No. 1.

Filed Dec. 18, 1900.

(Copy.)

STARKWEATHER	}	Eq. No. 20360.
<i>vs.</i>		
WARNER ET AL.		

Crescent Heights Syndicate.

The present status of this syndicate is as follows: The assets consist of about three acres of land on Spring road: The liabilities are: Spear note about \$630; Jenner notes about \$770; Warner note about \$600. Arrears of tax with penalties about \$200.

All these notes are secured by a deed of trust which is now overdue and the land can be sold out at any time at the request of any note holder.

The trustee Croissant has also a claim for money paid on behalf of the syndicate but the attorney for the syndicate reports that there is a shortage in the accounts of the trustees Croissant and Johnson of about the same amount so this claim need not be considered at present, as one about offsets the other.

The stockholders to whom this circular letter is sent are respectfully asked to answer the following questions in writing and to address their replies to Ellis Spear, Equitable building, Wash. D. C.

1. Are you willing to have the property sold out under the deed of trust so that you lose all further interest in the matter?

2. Are you willing to pay an assessment of \$20 a share to settle the arrears of taxes, the interest on the notes and a curtail on the Warner note?

3. Are you satisfied with the present trustees, Croissant and Johnson, or if not, are you desirous that the undersigned be made substitute trustees for the purpose of making and enforcing assessments, and managing the property in the future?

The undersigned are stock holders and are willing to extend their notes without curtail in cash if the interest on them be paid and think they can get the Warner note extended if curtailed one third and the interest paid.

The undersigned also think that the three acres of land *is* worth the encumbrances on it, that it will be worth much more in the course of some years and that it can be carried by small semi-annual assessments sufficient to cover the taxes interest on notes and to take up the Warner note in three annual payments.

This assessment will release the property for six months, at the expiration of which time further assessments will be necessary only to pay the semi-annual interest, unless further payments be required on the Warner note, in any event only for small sums.

The undersigned now believe that the property is worth more than the encumbrances and will increase in marketable value henceforth.

ELLIS SPEAR.  
HERBERT W. T. JENNER.

Washington, D. C., Feb. 18, 1899.

455

(Copy.)

*Answer, Feb. 24, 1899.*

WASH., D. C.

Ellis Spear, H. W. T. Jenner.

GENTLEMEN: Your communication of the 18th inst. at hand. We cannot for reasons not unknown to you answer your several questions. By reason of our claim upon the property in question we can only insist that no action be taken which shall impair the value of the certificates of the Crescent Heights syndicate.

Permit us to suggest that you communicate direct with the owner of the equity redemption.

Respectfully,

YERKES AND BAKER.

456

EXHIBIT J. E. M. No. 3.

D. H. F. Liber 2279, folio 257 *et seq.*

STARKWEATHER	}	Eq. No. 20360.
vs.		
WARNER ET AL.		

Herbert W. T. Jenner	}	Deed. Recorded February 3, 1898, 10.18 a. m.
to		
Johnson & Croissant, Trs.		

This indenture, made this twenty-eighth day of January in the year of our Lord one thousand eight hundred and ninety-eight, by and between Herbert W. T. Jenner (bachelor) of the city of Washington, D. C. party of the first part, and John O. Johnson and John D. Croissant, trustees, of the city of Washington, D. C. parties of the second part:—Witnesseeth, that the party of the first part for and in consideration of \_\_\_\_\_ dollars lawful money of the United States of

America to him in hand paid by the parties of the second part, receipt of which before the sealing and delivery of these presents is hereby acknowledged, Fee, \$1.75. St., 10 cts.

\_\_\_\_\_ has given, granted, bargained, and sold, aliened, enfeoffed, released, conveyed and confirmed, and does by these presents give, grant, bargain and sell, alien, enfeoff, release convey and confirm unto the parties of the second part, their heirs and assigns forever the following described land and premises, situate, lying, and being in the District of Columbia and distinguished as all his interest in those certain pieces or parcels of land and premises known and distinguished as and being lots numbered one, two, three, four, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, sixteen, seventeen, twenty-two, twenty-three and twenty-four in the

457 tract of land known as the J. C. Lewis subdivision on the north side of Spring street at its point of union with Fourteenth street extended, as the same is recorded in County Book 6, page 113, one of the records of the office of the surveyor of the District of Columbia, together with all and singular, the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity or otherwise however of the party of the first part, of, in, to or out of the said land and premises. To have and to hold the said land, premises and appurtenances unto and to the only use of the parties of the second part, their heirs and assigns forever, and the survivor of them, his heirs and assigns, in and upon the uses and trusts following: that is to say, in trust for the sole use and benefit of the persons who have contributed to the purchase of said described land, their heirs and assigns, as tenants in common in the shares and proportions in which

they respectively contributed, with full power and authority in them, the said parties hereto of the second part, or the survivor of them, or the heirs of the survivor from time to time, and at all times the same or any and every part thereof, to manage, control, let, lease, sell or mortgage, and the rents, issues, and profits thereof, to collect and receipt for, and the same and every part thereof, from time to time, and at all times to convey to such person or persons, to such uses and in such quantity and quality of estate, or estates

458      gage or for any less estate as the said parties hereto of the second part, or the survivor of them, or his heirs shall in their or his discretion deem most for the interest and advantage of all parties concerned, without any liability or accountability, of any tenant, purchaser, or purchasers, mortgagee or mortgagees, or person or persons loaning money to see to the application of any monies paid or advanced to the said parties of the second part on account of said real estate. And the said Herbert W. T. Jenner, his heirs, executors, and administrators, do hereby covenant and agree, to and with the parties of the second part, their heirs and assigns, that he, the party of the first part and his heirs shall and will warrant and forever defend the said land and premises and appurtenances unto the parties of the second part their heirs and assigns, and the survivor of them, his heirs and assigns from and against the claims of all persons claiming or to claim the same or any part thereof, or interest therein, by, from, under or through him, them, or any of them. And further, that the party of the first part and his heirs shall and will at any and all times hereafter upon the request and at the cost of the parties of the second part, their heirs and assigns, and the survivor of them his heirs and assigns, make and execute all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said land and premises and appurtenances, unto the parties of the second part, their heirs or assigns, as the parties of the second part, their heirs or assigns or their counsel learned in the law shall advise, de-  
459      vise, or require.

In testimony whereof, the party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

HERBERT W. T. JENNER. [SEAL.]

Signed, sealed and delivered in the presence of:

THOMAS J. STALEY.

DISTRICT OF COLUMBIA, *To wit:*

I, Thomas J. Staley, a notary public in and for the said District aforesaid, do hereby certify that Herbert W. T. Jenner, party to a certain deed bearing date on the 28th day of January, A. D. 1898, and hereunto annexed, personally appeared before me, in the said

District aforesaid the said Herbert W. T. Jenner being personally well known to me as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and official seal this thirty-first day of January, A. D. 1898.

THOMAS J. STALEY,  
*Notary Public.*

[Seal of Thomas J. Staley, Notary Public, District of Columbia.]

DISTRICT OF COLUMBIA :

OFFICE OF THE RECORDER OF DEEDS, *December* 18, 1900.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 2279 fol. 257 *et seq.* one of the land-records of the District of Columbia.

GEO. F. SCHAYER,  
*Dep. Recorder of Deeds.* [SEAL.]

(10c. int. rev. stamp.)

460

EXHIBIT J. E. M. No. 6.

Liber 1679, folio 422 *et seq.*

STARKWEATHER }  
vs. } Eq. No. 20360.  
WARNER ET AL. }

Croissant and Johnson, Trs., } Agreement. Recorded June 1, 1892.  
to } 3.50 P. M.  
George B. Starkweather. }

WASHINGTON, D. C., *May* 27, 1892.

Mr. Geo. B. Starkweather.

DEAR SIR: Before any more money can be paid to you by us as trustees in the purchase of Crescent Heights the following points must be agreed to. 1. The total cost of this property, including colored holdings is to be seventy-five thousand dollars (\$75,000.) and if you fail to get the titles to these colored holdings by June 1, 1892, then the trustees are to be considered as authorized to purchase these colored holdings at the lowest possible price, and to charge you for the same an amount not to exceed thirty-four cents per sq. foot, the trustees to pay the balance if more is required. 2. A deed of all the property now owned by you and known as Crescent Heights, to be delivered to the trustees. 3. All the conditions recited in contract of May 2, 1892, to be fully carried out, and we agree to meet them fully and promptly as far as our part is concerned.

Yours truly,

J. D. CROISSANT,  
J. O. JOHNSON, *Trustees.*

461 I hereby agree to the conditions recited above provided the bond lien on the property (nominal \$10,000.) be left for me to settle and \$10,000 cash be paid me as soon as deed to second 7 acre tract is delivered by June 1st, 1892.

GEORGE B. STARKWEATHER.

DISTRICT OF COLUMBIA, ss :

I, Rutledge Willson, a notary public in and for the said District do hereby certify that George B. Starkweather, party to a certain instrument in writing bearing date on May 27, 1892, and hereto attached, personally appeared before me in said District the said George B. Starkweather, being personally well known to me as the person who executed the said instrument in writing, and acknowledged the same to be his act & deed.

Given under my hand & official seal this 1st. day of June, A. D. 1892.

RUTLEDGE WILLSON,  
Notary Public.

[NOTARIAL SEAL.]

DISTRICT OF COLUMBIA :

OFFICE OF THE RECORDER OF DEEDS, *December 18, 1900.*

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 1679 fol. 422 *et seq.* one of the land-records of the District of Columbia.

GEO. F. SCHAYER,  
*Dep. Recorder of Deeds.* [SEAL.]

(10c. int. rev. stamp.)

462 EXHIBIT J. E. M. No. 12.

STARKWEATHER	} Eq. No. 20360.
vs.	
WARNER ET AL.	

This indenture, made this 2nd day of May in the year of our Lord one thousand eight hundred and ninety-two, by and between George B. Starkweather and Emma L. Starkweather, his wife, both of the District of Columbia parties of the first part, and John D. Croissant and John Q. Johnson also of the District of Columbia parties of the second part :

Witnesseth, that the said parties of the first part, for and in consideration of ten dollars, lawful money, to them in hand paid by the parties of the second part, is hereby acknowledged, have given, granted, bargained, and sold, aliened, enfeoffed, released, conveyed and confirmed, and do by these presents give, grant, bargain and



sell, alien, enfeoff, release, convey and confirm unto the parties of the second part, their heirs and assigns, forever the following described land and premises, situate, lying and being in the District of Columbia and distinguished as all those pieces or parcels of ground designated as lots one (1) to forty-four (44) both inclusive of J. C. Lewis' subdivision of Pleasant Plains, situate on the north of Spring St. at a point of union with 14th St. extended, except the pieces or portions already deeded in fee to others, together  
 463 with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity or otherwise however, of the parties of the first part, of, in, to or out of the said land and premises:

To have and to hold the said land and premises and appurtenances, unto and to the only use of the parties of the second part their heirs and assigns, forever.

And the said George B. Starkweather for himself, his heirs, executors and administrators do hereby covenant and agree to and with the parties of the second part, their heirs and assigns, that they, the parties of the first part and their heirs shall and will warrant and forever defend the said land and premises and appurtenances unto the parties of the second part, their heirs and assigns, from and against the claims of all persons claiming or to claim the same or any part thereof, or interest therein, by, from, under and through

And further, that the parties of the first part and their heirs shall and will, at any and all times hereafter, upon the request and at the cost of the parties of the second part, their heirs and assigns, make and execute all such other deeds or deeds, or other assurance in law, for the more certain and effectual conveyance of the said land and premises, and appurtenances, unto the parties of the second part, their heirs or assigns, as the parties of the second part, their heirs or assigns or their counsel, learned in the law, shall advise, devise or require.

461 In testimony whereof, the parties of the first part, have hereunto set their hands and seals on the day and year first hereinbefore written.

(S'g'd) GEORGE B. STARKWEATHER. [SEAL]  
 EMMA L. STARKWEATHER. [SEAL]

Signed, sealed and delivered in the presence of—

(S'g'd) ALEX. S. STEWART.

DISTRICT OF COLUMBIA, *To wit* :

I, Alex. S. Stewart a notary public in and for the said District of Columbia do hereby certify that George B. Starkweather and Emma L. Starkweather parties to a certain deed bearing date on the 2nd

day of May, A. D. 1892, and hereto annexed, personally appeared before me, in the said District of Columbia the said George B. Starkweather and Emma L. Starkweather being personally well known to me as the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Emma L. Starkweather being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her by me acknowledged the same to be her act and deed, and declared that she willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand and official seal, this 2nd day of May, A. D. 1892.

(S'g'd)

[NOTARIAL SEAL.]

ALEX. S. STEWART,  
*Notary Public in and for the*  
*District of Columbia.*

465      Endorsed: Deed in fee. Exhibit J. D. C. No. 11 Wm. H. Shipley examiner. Geo. B. Starkweather *et ux* to John D. Croissant and John O. Johnson, trustees. Received for record on the 19 day of July A. D. 1892 at 1:04 o'clock p. m., and recorded in Liber No. 1698 at folio 412 *et seq.* one of the land records for the District of Columbia, and examined by (S'g'd) B. K. Bruce, recorder. Filed Mar. 14, 1896. J. R. Young, clerk.

466      Supreme Court of the District of Columbia.

TUESDAY, August 29th, 1899.

Session resumed pursuant to adjournment, Mr. Justice Clabaugh presiding.

\*      \*      \*      \*      \*      \*  
GEORGE B. STARKWEATHER

*vs.*

BRAINARD H. WARNER ET AL.

} No. 20360. Equity.

This cause came on to be heard at this term, upon cause shown by the plaintiff why the order ratifying and confirming *nisi* the sale made by S. Herbert Giesy and Brainard H. Warner, trustees on the 9th day of May should not be made final and was argued by counsel upon affidavits submitted by plaintiff and defendant; and thereupon, upon consideration thereof, it is this 29th day of August, 1899, ordered, adjudged and decreed, that the sale made by the said trustees, upon the 9th day of May 1899 of the property the subject of this suit, be finally ratified and confirmed.

HARRY M. CLABAUGH, *Justice.*

Filed Dec. 21, 1898.

In the Supreme Court of the District of Columbia.

ROBERT G. CAMPBELL, Complainant,	} Equity. No. 19192, Docket No. 44.
<i>vs.</i>	
HERBERT W. T. JENNER, Defendant.	

The amended bill of complaint of Robert G. Campbell, exhibited against the defendant, Herbert W. T. Jenner, respectfully shows to the court:—

First. That complainant and defendant are citizens of the United States, and residents of the District of Columbia.

Second. Complainant states that on or about the 29th day of January, 1889, one George B. Starkweather and his wife conveyed to Andrew B. Duvall and Charles C. Cole in trust to secure the note of said Starkweather of said date to order of Andrew C. Bradley trustee, for the sum of seven thousand five hundred and fifty-three dollars and 34/100 (\$7,553 34/100) falling due and payable four years after date with interest at six per cent. per annum, payable semi-annually, until paid, certain real-estate located in the District of Columbia, to wit: part of Padsworth and of Pleasant Plains tracts, beginning for the same at a large stone to the north of Piney branch on the 14th Street road, which stone is also the beginning of the first line of Argyle &c.; thence north  $61\frac{1}{2}^{\circ}$  east 198 feet along the line of the York estate; thence north  $54^{\circ}$  east 359 feet along said line to the north-east corner of the herein described tract; thence south  $52\frac{1}{2}^{\circ}$  east 290 40/100 feet to a stone; thence south  $33\frac{1}{2}^{\circ}$  east 300 30/100 feet to an oak tree; thence south  $18\frac{3}{4}^{\circ}$  east 174 90/100 feet to what was the north-west corner stone of William Holmead's boundary; thence north  $66\frac{1}{4}^{\circ}$  west 36 50/100 feet; thence north  $89^{\circ}$  west 255 feet; thence south  $84^{\circ}$  west 227 75/100 feet thence south  $80\frac{1}{2}^{\circ}$  west 181 50/100 feet to a stone; thence north  $19^{\circ}$  west 263 feet along the Capt. Hall line to a stone; thence south  $63^{\circ}$  west with the Hall line along a wagon road 113 feet; thence south  $15^{\circ}$  west 56 feet to the east side of 14th Street road; thence north  $28^{\circ}$  west with said road 205 feet to a point beyond Piney Branch bridge; thence north  $76\frac{1}{2}^{\circ}$  east 79 20/100 feet to beginning, and contains about seven (7) acres, and being the same property which was conveyed to said George B. Starkweather by deeds recorded respectively in Liber 1172, folio 398, and Liber 1193, folio 272, and also an additional piece of property adjoining the said last mentioned piece known as lot one (1) in the Holmead tract bordering on the north and west lines of Spring street and lying adjacent to the south and east lines of the Lewis land and south of the land of W. J. Rhees which was transferred

from William Holmead to Virginia C. Lewis by deed thereof, recorded July 14th, 1886, in the land records of the District of Columbia. The said deed of trust is recorded in said land records in Liber 1365, folio 248.

Third. Complainant further avers and charges that the said trustees, Duvall and Cole, grantees in the said deed of trust, referred to in the 2nd paragraph of this bill, by direction of the parties secured thereby, advertised the said land, mentioned in the said deed of trust, and in the 2nd paragraph, for sale, at public auction, because of default in the payment of the said indebtedness, and that after several postponements the said real-estate was sold by the said trustees, Duvall and Cole, on the 3rd day of February, 1898, at which sale the defendant as trustee was the highest bidder and as trustee became the purchaser thereof, for the sum of seventeen thousand one hundred (\$17,100) dollars.

Complainant further avers that the said Duvall and Cole, trustees, by deed, dated the 3rd day of February, 1898, in Liber 2294, folio 167, one of the land records of the District of Columbia, conveyed the said real-estate, mentioned in paragraph 2 of this bill, to the defendant, Herbert W. T. Jenner, trustee, but the terms of the trust are not expressed in the said deed. And the said Herbert W. T. Jenner, trustee, conveyed the said real-estate by deed, dated the 3rd day of February, 1898, and recorded on the 12th day of February, 1898, in said Liber No. 2294, at folio 170, to Brainard H. Warner and S. Herbert Giesy, trustees, eleven thousand, four hundred (\$11,400) dollars balance of purchase money on the said purchase of the defendant, Jenner, as trustee, and which purchase money is represented by two notes of the said Jenner as trustee bearing even date with the said deed of trust, each of said notes being for the sum of fifty-seven hundred (\$5700) dollars and payable respectively in one and two years after date, with interest at six per cent. per annum, payable semi-annually.

Fourth. Complainant states that at and before the time of the sale made as aforesaid by the said trustees, Duvall and Cole, under the said deed of trust, the title to the said land, subject to said deed of trust, was vested in a certain J. D. Croissant and a certain John O. Johnson as joint tenants in fee by virtue of certain deeds from said Starkweather and his wife, which said grantees had given various certificates to the contributors of the purchase money, and under the said deeds to said Croissant and Johnson the holders of the said certificates were entitled to have a certain interest in the proceeds of a sale or sales of said real-estate. The total number of said certificates was thirty each for twenty-five hundred (\$2500) dollars, and of said number all but six certificates were issued; and the latter number were held by the said Croissant and Johnson to be sold to pay the debt secured by the said deed of trust to Duvall and Cole, trustees. But in fact the said six shares were not sold and the said deed of trust was not paid by the said Croissant and Johnson. Complainant held three of the outstanding certificates at the time

of said sale and now holds them, and the defendant also held a number of said certificates, but how many complainant does not know. By virtue of said holdings complainant and defendant and other holders of like certificates, who are unknown to complainant, each became and were thereby entitled to a portion of the proceeds of any sale of the said real-estate over and above the debt secured by the said deed of trust.

Fifth, Complainant further avers that on or about the 14th day of December, 1897, the defendant, Jenner, called upon complainant and proposed that they and as many of the said syndicate as would agree thereto should combine for the purpose of protecting their respective interests in the proceeds of said land, which was then advertised for sale under said deed of trust given as aforesaid, by said Starkweather and wife to said Duvall and Cole, and the defendant engaged to act as the attorney or agent of complainant to bid in the property for as small a sum as possible, the outside limit to be twenty-four thousand (\$24,000) dollars, and this agency was represented in and by a writing prepared by defendant and then and there signed by complainant in the following language, to wit:

*Power of Attorney.*

WASHINGTON, D. C., Dec. 14, 1897.

We, the undersigned, hereby appoint Herbert W. T. Jenner, trustee, of Washington, D. C., our attorney-in-fact, to bid for us at an auction resale of about seven acres of land near Washington, D. C., to take place on Dec. 16, 1897, under a deed of trust recorded in Liber 1365, folio 248 *et seq.*, or any postponement of said resale or subsequent resale, to bid in the property for as small a sum as possible, the outside limit to be twenty-four thousand dollars (\$24,000).

And we hereby agree to pay Mr. Jenner our proportionate shares of the total cost and expense of the tax deeds on said property already obtained by him, and we agree to pay our proportionate shares of the deposit money on the day of sale and the balance of the purchase money within the period and on the terms set forth in the advertisement under which the sale is made, our said proportionate interests or shares to be as stated below under our respective signatures.

R. G. CAMPBELL.

and the said paper ever since the signing thereof has been solely in the possession and under the control of defendant.

On the said day of sale the defendant bid in the said property as aforesaid, as the agent for complainant, and the original contributors to the said syndicate to protect their interest in any proceeds thereof and took title thereto as trustee as aforesaid.

Complainant stood ready and willing on the day of sale and ever since then has been and still is ready and willing to pay his pro-

portionate share of the deposit money and otherwise to comply with the above mentioned paper signed by him, but was not asked to do so by the defendant, and never has been given an opportunity by defendant to pay the same or comply therewith. On the contrary the defendant after he had bid in said property as aforesaid intentionally repudiated his said agency and refused to comply therewith, contrary to equity and good conscience, and would not have received complainant's share of deposit at any time, nor have permitted complainant to comply with the terms of said paper. Complainant further states that on the day after said sale defendant ignored his said agency and claimed as the sole purchaser of said real-estate to be interested alone in the proceeds thereof, and contrary to his agreement and the terms of his said employment

473 by complainant did not permit complainant to pay his share of said deposit, but required complainant to take any share in the proceeds of any sale of said real-estate to be made by him, and prepared and presented to complainant for his signature the following paper in writing wholly different in terms from the said first paper, to wit:—

FEB. 4, 1898.

H. W. T. Jenner, trustee:

In the matter of the 7 acres of land purchased by you yesterday, (14th St. road and Spring street), I hereby agree to take any share in same at the price paid by you and to settle within the period mentioned in the advertised terms of sale or relinquished all claim to take any share, with the understanding that I am not to be required to take any more than a one quarter interest, or less than three one-thirtieths ( $\frac{3}{30}$ ths) of the whole interest.

Complainant then and there refused to sign said last mentioned paper because he was thereby required to agree to take any share in the said purchase but agreed to sign the said paper if the provision thereof "to take any share in the same" was stricken out, and then and there asked for a statement of said cost and expenses of tax deeds on said property, and of his proportionate share of the deposit money, and balance of the purchase money on the terms set forth in said advertisement mentioned, but the defendant then and there refused and declined to give the same, and ever since then, though requested, has refused and declined so to do, and complainant was then and there ready and willing and here now offers to

make the proper payments to the said defendant; complainant  
474 also then and there directed the said defendant, as his agent and trustee, to call a meeting of the members of the syndicate who desired to purchase said land, and stated to his agent and trustee that he had lived too long in Washington to be a party to freezing out any shareholder therein. And the defendant in violation of the trust and confidence reposed in him by complainant undertook and has dealt with the said property as though he was the absolute owner of the proceeds thereof, and has sold shares or interest

in said land as he desired and applied the money as he saw fit and has as your complainant is informed and believes made a profit for himself out of some of his sales, if not all of them, and claims to own a large interest, the extent whereof is unknown to complainant, and will dispose of the same to his profit and advantage, contrary to his agency and trusteeship.

Your complainant demands of his said agent and trustee an accounting and statement of his expenditures as he has heretofore demanded, but the defendant on the 5th day of March, 1898, contrary to equity and good conscience, pretended and now pretends that complainant failed to comply with the terms of his contract, and refused to render an accounting in furtherance of his scheme and intent had and now being carried out to deal unjustly with your complainant and the other members of the said syndicate, and to deprive them wrongfully of their money and property and to inflict great loss and injury upon them.

Your complainant charges and avers that the said defendant, Jenner, has acted so contrary to equity and good faith that  
475 he ought to be removed as trustee and to have his legal title to said property divested and put in some trustee to be appointed by this honorable court, and that he ought to be enjoined from selling or transferring said land, otherwise complainant and the other members of said syndicate will suffer great and irreparable injury.

Complainant is informed and believes that said defendant, Jenner, is financially irresponsible and has no property subject to execution at law.

Your complainant is now and has been ready and willing at all times to contribute his just share of taxes, expenses of sale, cash payment thereon, and of the deferred purchase money whenever he can ascertain what his true and actual just contribution to the same ought to be.

Inasmuch as your complainant is without adequate remedy or relief at law he, therefore, prays as follows:—

1st. That the writ of subpoena may issue to require the defendant to appear and answer the exigency of this bill, but not under oath, an answer under oath being hereby waived.

2nd. That the defendant, Jenner, as trustee, or a new trustee to be appointed, may be required by decree of this honorable court to hold for complainant his just share and interest in the proceeds of said land and premises so purchased by him, as set forth in the said bill on the 3rd day of February, A. D., 1898.

3rd. That the said defendant may be required to account to your complainant for all moneys received and expended by him,  
476 in and about the said trust, and may discover and disclose what share or shares he retained in the said purchase; what share or shares he has either sold, assigned, transferred or bargained either to sell, assign or transfer; and to what person or persons, and the several amounts they have contributed to the said

purchase, and that he may give a general account of his said management of his said trust estate, and that he may be held accountable for any loss incurred and injury sustained by your complainant by reason of the violation of the trust and confidence placed in the said defendant by your complainant, and that he may be removed as trustee, and a new trustee appointed and substituted in his place and stead.

4th. That pending a hearing of this case the said Jenner may be restrained and enjoined from conveying any interest in the said real-estate; and from selling, assigning, transferring or delivering any shares or interest whatsoever in and to the said real-estate.

5th. And for such other and further relief as the nature of the case may require.

The defendant to this bill is Herbert W. T. Jenner.

ROBERT G. CAMPBELL,  
By E. H. THOMAS, *His Att'y.*

E. H. THOMAS,  
*Solicitor for Complainant.*

477 *Testimony of H. W. T. Jenner on Behalf of Complainant.*

Filed March 14, 1896.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER	} In Equity. No. 16612.
<i>vs.</i>	
JOHN O. JOHNSON ET AL.	}

\* \* \* \* \*

NOTE.—At this point Mr. H. W. T. Jenner, was called as a witness by the complainant, and interrogated as follows:

Direct examination.

By Mr. FAY:

Q. Did you pay the trustees any consideration for that conveyance?

Mr. GIESY: I object to the question as not being responsive to anything in the direct examination. I decline to permit him to answer the question.

Mr. FAY: I will have that question certified to the court. The question can be certified to the court in case the witness declines to answer.

Q. Do you decline to answer the question, Mr. Jenner? A. It seems to me it is proper for me to follow the request of my counsel.

Q. Do you decline to answer the question? A. I decline to answer the question.



Mr. GIESY: I withdraw my objection to that question.

478 Q. Did you pay the trustees any consideration for the conveyance of this property to you? A. I paid a valuable consideration for the property, but not direct to the trustees.

Q. For that particular conveyance? A. For that particular conveyance and at that time?

Q. Not to the trustees, however? A. I paid the money at the order of the trustees.

Q. How much money? A. I cannot tell you.

Q. Approximate it? A. I think I paid somewhere about \$60. at the time the deed was passed. I have paid other sums, and I am still under contract with them to pay more.

Q. Is the contract in writing? A. Yes, we have also a verbal understanding.

Q. Have you the written contract? A. I have not.

Q. Who has it? A. I don't know; I presume the trustees have it.

Q. Was the order on which you paid, as you claimed, the order of the trustees in writing? A. No, a verbal order.

Redirect examination.

By Mr. GIESY:

Q. Mr. Jenner, this purchase was for such of those lots called the colored holdings on the Spring Street road as the trustees had  
479 title to, was it not? A. It was.

Q. Do you consider that you paid a proper and sufficient consideration for such property as the trustees could convey? A. Yes, taking the agreements into consideration I think it was a full consideration.

HERBERT W. T. JENNER.

Subscribed and sworn to before me this 10th day of March  
January 1896.

WILLIAM H. SHIPLEY,  
*Examiner in Chancery.*

480 *Defendants' Designation for Transcript of Record.*

Filed March 1, 1905.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER	} Equity. No. 20205.
<i>vs.</i>	
HERBERT W. T. JENNER ET AL.	

To the clerk of the supreme court of the District of Columbia:

In behalf of the defendants, appellees, we hereby designate, in addition to what is included in the designation of the complainant,

the following parts of the record in the above entitled cause to be included in the transcript of the record on appeal to the Court of Appeals, as follows, to wit:

- 1st. Decree in the case of *Campbell vs. Jenner*, equity No. 19192.
- 2nd. Amended bill in the case of *Starkweather vs. Jenner* and others, equity No. 1661, and the decree of the court in that case.
- 3rd. The bill and the answer of the defendants Elizabeth B. Hubbard and the affidavit of Mr. Burke and the decree of the court dismissing the bill in the case of *Starkweather vs. Hubbard, et al.*, equity No. 17246, and the decree in said cause.
- 4th. The original bill and answer of the defendant Starkweather, the answers of the defendants Cole and Duvall, trustees, the decree of the court, and the report of the auditor, all in the case of *Elizabeth B. Hubbard vs. George B. Starkweather, et al.* equity No. 19856.

B. F. LEIGHTON,  
 COLE & DONALDSON,  
*Attorneys for Defendants.*

481 *Decree Sustaining Demurrer and Dismissing Bill.*

Filed May 18, 1903.

In the Supreme Court of the District of Columbia.

ROBERT G. CAMPBELL, Complainant,	}	Equity No. 19192.
HERBERT W. T. JENNER, Defendant.		

This cause came on to be heard at this term of court, on amended bill and demurrer thereto, and was argued by counsel; and the complainants electing to stand on said demurrer on consideration whereof, it is this 18th day of May, A. D. 1903, adjudged, ordered and decreed that said demurrer be and the same hereby is sustained, and that said bill of complaint be, and the same hereby is dismissed without prejudice and without costs.

By the Court:

A. B. HAGNER,  
*Assoc. Justice.*

Filed May 6, 1896.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER, Complainant,	}	Equity. No. 16612.
<i>vs.</i>		
JOHN O. JOHNSON, JOHN D. CROISSANT, and Herbert W. T. Jenner, Defendants.		

To the supreme court of the District of Columbia, holding an equity court :

The amended bill of complaint of George B. Starkweather, filed by leave of the court, respectfully represents to the court, as follows:

*First.* That he is a citizen of the United States and a resident of the District of Columbia, and brings this suit in his own right.

*Second.* The defendants John O. Johnson and John D. Croissant are also citizens of the United States and residents of the District of Columbia. The defendant Herbert W. T. Jenner complainant states upon information and belief is an alien, but residing within the District of Columbia.

*Third.* That heretofore, to-wit in the month of April A. D. 1892, complainant was the owner of that certain piece or parcel of land known as part of *Petworth* and Pleasant Plains, more particularly designated as Crescent Heights, situated at the junction of Fourteenth street extended and Spring road, in the District of Columbia, containing about four hundred thousand (400,000) square feet more or less, and on to wit the 2nd day of May 1892, the complainant sold the same to the defendants Johnson and Croissant at and for the price of (\$75,000), seventy-five thousand dollars. That the said defendants paid ten thousand dollars (\$10,000) of the purchase price of the said property in cash on the 4th day of August, A. D., 1892, and received deeds of the said property duly recorded in Liber 1698 folio 412 *et seq.* and Liber 1724, folio 112, *et seq.* of the land records of the District of Columbia, which are hereby referred to, made part hereof, and leave is prayed to read the same at the hearing.

That the defendants Johnson and Croissant organized what is known among real estate brokers as a syndicate, and subdivided the equitable interests in the said real estate into thirty different holdings, or shares of the value of \$2,500.00 each, twelve of which amounting in value to the sum of (\$30,000), thirty thousand dollars complainant subscribed to as part of the purchase price of the property aforesaid and received certain certificates or declarations from the said John O. Johnson and John D. Croissant, who had constituted themselves trustees of the said syndicate.

That as part also of the purchase price of the said property, the said defendants assumed encumbrances amounting to about the sum of (\$20,000) twenty thousand dollars, and complainant has been informed, and so believing, states the facts to be that but a small portion of the said encumbrances have been satisfied but is unable to give any particulars regarding the same, and therefore calls  
484 upon the defendants in their answer to state what incumbrances, if any, have been removed and what proportion of those yet unreleased have been paid.

*Fourth.* That at the time of the sale of the said property as aforesaid, the frontage on Spring road was subdivided into a number of lots numbered consecutively from 1 to 24. That at intervals on the said Spring Road frontage, and overlapping the lines of the said lots there were a number of small holdings owned by a number of people, who had made very undesirable improvements thereon. The existence of these small holdings of the said property on the Spring road and their situation with reference to the lines of the said subdivision of the said frontage into lots with which in no instance did they coincide interfered very materially with the desirability and utility of the said parcel of real estate and rendered it partially, if not wholly, unfit for the purposes of the syndicate as hereinafter stated. That your complainant and the said defendants Johnson and Croissant, at the time of the said sale realized the necessity of getting control of the said small holdings on the Spring road, which could have been readily done and was not only practicable but absolutely necessary to be done and accordingly the contract of sale made provision for this purpose and the said defendants were to reserve a portion of the said purchase money with which to secure control of this property and charge not more than double the purchase price per square foot or a sum not to exceed the amount of  
485 thirty-four cents (.34) per square foot to the complainant and themselves pay any additional sum necessary to secure control of the said property and agreed to do the same, on or before the 15th day of July, A. D. 1892, and have in fact withheld of the purchase price of the said property more than sufficient to purchase the said holdings at the rate of thirty-four (.34) cents per square foot.

*Fifth.* That at the time of the said sale the said defendants, Johnson and Croissant, represented that they intended to organize a syndicate and after subdividing the equitable interest in the said real estate into thirty shares of the value of twenty five hundred (\$2500) dollars each, sell certificates or declarations to that effect to purchasers and carry out their contract with your complainant in securing the small holdings on the Spring Road frontage, as aforesaid, thereby inducing your complainant to part with his title to the said property and accept in lieu of part of the purchase price thereof some thirty thousand dollars (\$30,000) worth of the stock of the said syndicate. That complainant did part with the title as aforesaid relying upon the said contract of the defendants to make the

syndicate valuable and obtain possession of the detached buildings on the Spring road which marred the symmetry and detracted from the utility of the said property and depreciated the value of the certificate shares of the syndicate. As on account of the said holdings the said lots on the Spring road could not be sold, as the said holdings covered some portion of nearly all the said lots, though they did not, in any one instance coincide with the lines of the same, in order therefore to derive any profit from the syndicate of the said property and realize the advantages expected to accrue therefrom, it was necessary that the syndicate should control the said Spring Road frontage and that the provisions of the contract of May 2nd, 1892, and the agreement supplemental thereto of May 27th, 1892, should have been specifically performed and control thereof secured by the said 15th day of July, 1892.

*Sixth.* That the said defendants, Johnson and Croissant, proceeded very incautiously in a very injudicious manner to obtain possession of some of the said small holdings on the said Spring road and did secure part thereof within a period of time much beyond the time agreed upon. That complainant frequently consented to an extension of the time within which the defendants should perform their agreement. That such extensions were at the request of the defendants, who pretended to set up difficulties in the way of the performance of their contract which they said the lapse of time would remove. That complainant deceived by the said specious assurances thereupon, from time to time acquiesced tacitly in such extensions and hoped for the performance of the said agreement, which was recognized by the said defendants as binding upon them and which was so necessary to the interests of complainant and upon the strength of which he parted with his title to his property. That defendants have not dealt fairly or equitably with complainant in any way, that such meetings of shareholders as have been held have been kept from his knowledge and in order to prevent his attendance notices of such meetings were sent to him so that he would always receive them one day too late. That the said defendants for a long space of time from the said 15th day of July, 1892, until the spring of 1895 concealed from your complainant their purposes and designs and deluded him into consenting to extensions of time for the performance of their agreement, and only a short time since told complainant that they would not buy out the said holdings, and positively declined to make any efforts to that end.

*Seventh.* Your complainant further states that on the 6th day of April 1895, about the time your complainant began to realize the intention of the said defendants to refuse to perform the agreements, the said defendants sold to the defendant Herbert W. T. Jenner, lots 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of Lewis subdivision of the said tracts, except such portions as were occupied by the said small holdings on the Spring Street road, for a nominal con-

sideration. Your complainant does not know what the real consideration was, if any, but calls upon the said defendants to state what consideration, if any, was paid by the defendant Jenner. Complainant has been informed and so believing states the facts to be, that the said defendant Jenner is an alien, has not declared his intention of becoming a citizen of the United States, and under the act of Congress of March 3, 1887, cannot acquire, own or hold any real estate in the District of Columbia.

*Eighth.* That your complainant in good faith made the said conveyance to the said defendants, Johnson and Croissant, and in good faith subscribed to the said syndicate, interests as part of the purchase price of the said property, relying upon his agreement  
488 with the said defendants Johnson and Croissant. That he consented that they should charge him if necessary double the purchase price or an amount estimated not to exceed the sum of thirty-four cents per square foot of the price of the Spring Road holdings, and that any deficiency in the price should be made up by the said defendants. That at the time the said agreement was made the said interests on the Spring road could have been purchased for much less than (34) thirty-four cents per square foot. That the syndicate on account of the failure to secure these holdings had not realized the object of its formation and cannot until the syndicate controls the Spring Street front. That the purchase thereof was practicable when the bargain to do so was made and is so at the present time. That it is necessary for the interests of complainant and the contract to purchase these small interests by July 15, 1892 was formed upon a good and valuable consideration. That the said defendants have secured the extensions of time with complainant's consent upon various pretexts only to finally refuse to perform the terms of their agreement. That complainant has often requested the defendants to perform the said contract but they have wholly refused and continue now to refuse to do the same. That the injury sustained by complainant he is advised is irremediable at law and unless the defendants are compelled to perform the agreement which they entered into, with your complainant, he is wholly without means of relief except in a court of equity. That as soon as practicable, after realizing that the defendants would do nothing in the premises he has appealed to this honorable court  
489 wherein he is advised he can alone obtain relief as he has no adequate and sufficient remedy on the law side of this court.

To the end therefore that he may obtain that relief which only a court of equity can grant, he humbly prays the judgment or decree of this honorable court, as follows:

*First.* That the writ of subpoena may issue to the said defendants requiring them and each of them to appear and answer the exigencies of this bill.

*Second.* That the defendants John O. Johnson, and John D. Croissant be ordered to make specific performance of the said agreement

with the complainant to secure the control of the Spring Road frontage of the said real estate.

*Third.* That the deed of the defendants Johnson and Croissant, of the said lots to the defendant Herbert W. T. Jenner, be canceled, set aside and for naught held and that they their agents and attorneys be enjoined from making any further or other conveyance of any of the said real estate to any parties whatsoever.

*Fourth.* That an account be taken under the said contracts and that the defendants be required to pay to the complainant such sums as may be due him together with interest thereon from the second day of May 1892, and as alternate relief.

*Fifth.* Your complainant further prays that if he should be found not entitled to the specific performance by the defendants of their contract, to purchase the colored holdings by reason of its uncertainty, impossibility of execution or other cause; that the sale be annulled and that an account be taken to ascertain in what sum the defendants should be reimbursed by complainant for moneys properly expended and chargeable to complainant, upon payment of which the defendants may be required to reconvey the property to complainant, the payment of which upon such reasonable terms as in equity and good conscience the complainant should be required to do, the complainant tenders himself ready and willing to do. And that complainant may have such other and further relief in the premises as the nature of the case may require and to this honorable court shall seem fit.

The defendants to this bill are John O. Johnson, John D. Croissant and Herbert W. T. Jenner.

GEO. B. STARKWEATHER.

JNO. C. FAY,  
*Sol. for Comp.*

DISTRICT OF COLUMBIA, ss :

I do solemnly swear that I have read the foregoing bill by me subscribed and know the contents thereof; and that the facts therein stated upon my personal knowledge are true and those stated upon information and belief I believe to be true.

GEO. B. STARKWEATHER

Subscribed and sworn to before me this 6th day of May, 1896.

WILLIAM C. PRENTISS,  
*Notary Public, D. C.*

[NOTARIAL SEAL.]

491 *Order Overruling Exceptions and Suspending Proceedings.*

Filed November 2, 1903.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER, Complainant.	} Equity. No. 16612.
<i>vs.</i>	
JOHN O. JOHNSON ET AL., Defendants.	

This cause coming on to be heard upon the report of the auditor, and complainant's exceptions thereto, and argument of counsel, upon consideration thereof, it is adjudged, ordered and decreed, that the said exceptions be and the same hereby are overruled; that the bill be retained in this court until the final hearing and judgment in the case of George B. Starkweather *vs.* Herbert W. T. Jenner *et al.*, known as No. 20205, in equity, now pending in this court; that should the said George B. Starkweather be denied a decree in said equity cause, No. 20205, as therein prayed, annulling and setting aside the sale made by Charles C. Cole and Andrew B. Duvall, trustees, of the real estate therein set out and described,—or decreeing the title thereto as being held in trust for the Crescent Heights syndicate, its successors or legal representatives,—then, and thereupon this cause shall stand dismissed, this order of dismissal to become final upon the day and date of said final adverse decree; otherwise, this cause to be then proceeded with as complainant may be advised, with leave to make application for a re-reference to the auditor.

ASHLEY M. GOULD, *Justice.*492 *Bill for Injunction, &c.*

Filed March 21, 1896.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER, Plaintiff.	} No. 17246. In Equity, Docket 40.
<i>vs.</i>	
ELIZABETH B. HUBBARD, Executrix of the Last Will and Testament of Stephen A. Hubbard, Deceased; W. W. Wright and George H. Wright, Trustees; John D. Croissant and William A. Croffut, Trustees; Amos M. Wilson and John H. Pryor, Trustees, Defendants.	

To the supreme court of the District of Columbia, holding an equity court:

George B. Starkweather brings this his bill of complaint and avers as follows:

1st. He is a citizen of the United States and a resident of the District of Columbia, and brings this suit in his own right.



The defendant, Elizabeth B. Hubbard, resides in the city of Hartford, State of Connecticut, and is sued as the executrix of the last will and testament of her husband, Stephen A. Hubbard, late 493 of said city of Hartford, who died about January 1890.

The other defendants are all residents of the District of Columbia, and are sued as trustees as hereinafter stated.

2nd. Over thirty-five years ago as a boy I was brought into contact with said Stephen A. Hubbard. He took quite a fancy to me and our relations up to the time of his death were more than usually intimate and friendly. One of my children, a son, was named after him. He was always solicitous to promote my welfare and manifested the most kindly interest in my family.

Some ten years ago, I called his attention to opportunities for good investments in real estate in this District and from time to time, at my suggestion, he sent me money which I invested in suburban real estate in my own name with his approval. In 1886 and 1887, I purchased in this way about \$50,000 worth of unimproved property, giving my notes for the deferred payments, secured by deeds of trust on the property purchased.

There was never any understanding or agreement between us as to what his interest in the property was to be, or how or when he was to be repaid the money advanced. He simply trusted me as a friend, feeling assured that if the result proved profitable he would not only be repaid the sums advanced by him, with interest, but that I would turn over to him a larger share of the profits than he would be willing to accept.

Mr. Hubbard subsequently met with losses and was unable to meet the second payments on the six pieces of property I had 494 purchased, aggregating about 180 acres. I resigned my position in the Interior Department in order to devote myself to the successful management of the property and save it from sacrifice.

In November 1889, I saw that a judgment for \$5,000. would be rendered against me on an obligation I had unfortunately incurred to a manufacturing concern; and feeling that my first duty was to secure Mr. Hubbard for what moneys he had advanced with interest, on December 2, 1889 I executed and had recorded a deed of trust to D. C. Reinohl and C. G. Berryman, on the six parcels of land, to secure my note to him at two years, for \$14,560., that being the amount of principal with interest to that date, at which he was greatly pleased, a true copy of which said deed is herewith filed marked "Exhibit G. B. S. No. 2." Having implicit confidence in me and desiring and intending that I should manage and control the property according to my best judgment untrammelled by said deed of trust, he returned the note to me to hold for him and, on December 26, 1889, wrote to said trustees informing them of said deed of trust and that he had signed two deeds of release in blank "to be used in my interest at the discretion of Mr. Starkweather and I hereby authorize you to execute the same at his request."

A true copy of said letter is herewith filed as part of this bill of complaint, marked "Exhibit G. B. S. No. 1." Shortly thereafter Mr. Hubbard died testate, leaving his widow executrix of his last will and testament. No copy of the will is on file in the office of the register of wills here and I am unable therefore to exhibit any copy of it. I believe and so aver, that she duly qualified at Hartford as such executrix.

495 3rd. She knew nothing of the business between Mr. Hubbard and myself and I explained everything to her with the utmost fidelity and told her my liberal intentions in case I was able to successfully handle the property, all of which greatly astonished her and her advisers, to whom came to Washington and were shown everything.

Mrs. Hubbard had as her attorneys in Hartford, the firm of Buck & Eggleston, by whom I was notified, by letter of June 17th, 1890, that Mrs. Hubbard had conferred with Mr. W. W. Wright of Washington, her husband's cousin, and had authorized Mr. Robinson White of Washington to act for her and confer with me, a true copy of which said letter is filed herewith as part of this bill, marked "Exhibit G. B. S. No. 2." This letter was confirmed by a letter to me from Mrs. Hubbard on the next day, June 18, 1890.

4th. In the spring of 1890, the real estate market in the District was very active and property readily sold at large prices.

The blanket trust aforesaid, covering said six parcels, was an obstacle in the way of my making any sales, unless releases could be had when sales were made. I was very desirous of closing out the property at that time and pleaded with Mrs. Hubbard and her attorneys to decide on something so that sales could be made and profits realized. But they vacillated and would do nothing. The six parcels would have all been sold under the first trust liens thereon had I not put in \$18,000. of my own money realized from other sources. Early in 1891, the fifty acre tract on the

496 Eastern branch, hereinafter more particularly referred to, was about to be advertised for sale and would be foreclosed under first deed of trust thereon and the remaining properties also would be sacrificed at forced sales, when I wrote to Mrs. Hubbard and her counsel advising them of the situation and urging that some pro rata share of proceeds of sales to be received by Mrs. Hubbard on the said amount due her as executrix should be agreed on, and further, that an advance of about \$12,000. cash would be necessary to prevent sale under deed of trust of said 50 acre tract. The result was that, under mutual agreement, the money was advanced by Mrs. Hubbard, executrix, to take up the notes secured by first trust on said tract, and I was to secure the amount by first deed of trust thereon,—give a new blanket trust on the other properties instead of the former one for the amount due under it, with interest, and such pieces or parcels as I might from time to time sell were to be released upon payment of a reasonable pro rata of the debt secured thereon.

Accordingly, said deeds of trust were prepared by said Robinson White as attorney for Mrs. Hubbard, and on March 10th, 1891, myself and wife executed and delivered said two deeds of trust, one of them conveying unto said W. W. and Geo. H. Wright in fee, all that certain tract of land in the District of Columbia being part of tract known as "Springdale" or "Baileys Purchase," containing 51.52 acres more or less, and particularly described in said deed by metes and bounds, in trust to secure my note to said Elizabeth B. Hubbard executrix, dated March 10, 1891, to her order for \$12,150,

the amount advanced by her, payable on demand with interest. Said deed of trust was recorded in Liber No. 1654, folio 357 *et seq.* of the land records of the District of Columbia, and a duly certified copy of the same is herewith filed as part of this bill, marked "Exhibit G. B. S. No. 4." The property described in said deed is that hereinbefore referred to as the 50 acre tract. At the same time, on said March 10th, 1891, myself and wife also executed and delivered the other deed of trust conveying other properties before referred to to the same trustees to secure said executrix my note for \$15,652, payable December 2nd, 1891, with interest, which said deed was recorded March 23rd, 1892, in Liber No. 1654, folio 361 *et seq.* of said land records, and a duly certified copy of which is herewith filed as part of this bill, marked "Exhibit G. B. S. No. 5."

Both of said deeds were acknowledged before said Robinson White as a notary public and were delivered to him at attorney for said executrix. At the same time he delivered to me a statement in writing by himself as such attorney, setting forth the agreement for partial releases from time to time as sales should be made by me, which I had placed on record in Liber No. 1774, folio 195 *et seq.* of said land records, and a duly certified copy of which is herewith filed as part of this bill, marked "Exhibit G. B. S. No. 6."

It was also at the time further agreed, that, inasmuch as in consequence of there being several judgments against me it might not be expedient to place on record said second blanket trust at that time, when the same should be recorded said first blanket trust should be released of record.

498 5th. In March 1892, as soon as said second blanket trust was recorded, I requested that said first blanket trust should be released in order that the properties might be reasonably marketable; this request was denied. I wired Mr. Buck, Mrs. Hubbard's attorney at Hartford, for an explanation. He replied by wire that he would instruct White to release said first blanket trust. But notwithstanding my urgent entreaties to have said trust released of record, made repeatedly thereafter, the same was not done until a few days since as hereinafter stated.

6th. I sold the north half of said 50 acre tract to John D. Croissant for \$15,834.00, and by deed dated April 15, 1892, conveyed the same to said John D. Croissant and William A. Croffut in fee in trust for a syndicate which said Croissant had organized, which said

deed was acknowledged April 25, 1892 and recorded May 5th, 1892 in Liber No. 1688 folio 42 *et seq.* of said land records, and a duly certified copy of which is herewith filed as part of this bill, marked "Exhibit G. B. S. No. 7." Said grantees assumed to obtain a release from the trust on said part of said 50 acre tract securing said executrix and, with my consent, to turn over to her the two notes mentioned in said deed and \$3000. the balance of cash, some \$2,000. of cash having been paid to remove judgments against me sought to be enforced against said property. Said sale was at a low price, the inducement to which was that said syndicate would develop their purchase and thereby greatly enhance the value of the south half of said tract. Said executrix, notwithstanding she was offered practically the entire proceeds of said sale, in violation of her contract on the faith of which said sale had been made, refused to authorize the release of said trust thereon in her favor.

7th. Said Croissant and Croffut, trustees, executed and delivered a deed of trust on said land conveyed to them to Amos M. Wilson and John H. Pyror, trustees, to secure their two promissory notes to me aggregating \$5359.20 nominally, as stated therein, for deferred purchase money; but really as their compensation for services in the matter, which said notes I endorsed without recourse and turned over to them. Said deed of trust was recorded May 5th, 1892 in Liber No. 1688 folio 46 *et seq.* of said land records, and a duly certified copy of the same is filed herewith as part of this bill, marked "Exhibit G. B. S. No. 8."

And a true copy of the receipt of said Croissant for said deed is filed herewith as part of this bill, marked "Exhibit G. B. S. No. 9."

8th. In the spring of 1891, fully expecting that said executrix could authorize releases from said trust as sales were made on receipt of a reasonable pro rata of the purchase money, at considerable cost I had surveys made of said 50 acre tract and a subdivision prepared which was identical with the lithographic plat issued by said Croissant and Croffut, trustees, shortly after the purchase by them, and a copy of which is herewith filed as part of this bill, marked "Exhibit G. B. S. No. 10."

9th. Said Croissant & Croffut, after long and vain efforts to have said executrix release said trust securing her, abandoned the project of purchasing and developing said property, never paid the balance of the cash one-third of said purchase money, nor delivered their said promissory notes, mentioned in said deed to me, for the remaining two-thirds but have never reconveyed said property nor caused said deed of trust securing said notes for \$5359.20 to be released.

10th. In 1891, I agreed to sell about one acre of the south half of said tract to a certain party, who desired to establish a factory there, for the sum of \$1,000, and receipted to him for a deposit he made on account of purchase money. On application to said executrix to release it from said trust on payment to her of the entire pur-

chase money, she refused to do so and said sale in consequence fell through.

11th. In all of said properties hereinbefore referred to I have put upwards of \$50,000 of my own money and devoted to it some seven years of time and labor. I have been subjected to large losses by reason of inability to make sales or even to offer the property for sale, because of the refusal of said executrix to record the release of said first blanket trust and her refusal to carry out her contract to release as sales should be made on receipt of a reasonable pro rata share of purchase money.

12th. Notwithstanding the premises, said executrix on February 27th, 1896, suddenly caused a demand on me to be made for the payment of both notes made to secure her as aforesaid, caused to be placed on record the release of said first blanket trust and, 501 on March 11, 1896, had an advertisement inserted in the Evening Star newspaper of the sale of said 50 acre tract at public auction, on Wednesday March 25th, 1896 at 4 o'clock p. m., by said W. W. and George H. Wright, trustees under said deed of trust to them, upon the terms, one-third cash and the balance at one and two years with interest, a copy of which said advertisement is filed herewith as part of this bill, marked "Exhibit G. B. S. No. 11."

13th. Said property is advertised for sale and it is the intention of said trustees to sell the same, as a whole, when it is manifest that a sale of at most one-third of the same would liquidate the amount secured by said deed of trust; and plaintiff is confident that the sale of said north half would realize more than sufficient to pay said indebtedness and all expenses of sale.

14th. Plaintiff is advised and so charges and avers, that he is entitled to have said contract to release as sales may be made on receipt of a reasonable pro rata of the purchase money, specifically performed as to all of said properties, and if such is decreed, said indebtedness can be wholly satisfied within one and two years, the time specified in said advertisement. And plaintiff is willing even that said executrix should receive a more than reasonable pro rata of the proceeds of all sales made.

Wherefore, inasmuch as the plaintiff can only have relief in your honorable court, he prays as follows:

502

*Prayers.*

1st. That said Elizabeth B. Hubbard, executrix; W. W. Wright and George H. Wright, trustees; John D. Croissant and William A. Croffut, trustees; Amos M. Wilson and John H. Pryor, trustees, may be made parties defendants hereto and required to answer this bill under oath as specifically as if specially interrogated thereto.

2nd. That said W. W. Wright and George H. Wright, trustees, may be enjoined from selling said real estate under said deed of trust, "Exhibit G. B. S. No. 4," and from further continuing the publication of said advertisement of sale.

3rd. That said John D. Croissant and William A. Croffut, trustees, may be decreed to re-convey said property described in "Exhibit G. B. S. No. 7," unto the plaintiff in fee simple.

4th. That said Amos M. Wilson and John H. Pryor, trustees, may be decreed to convey unto the plaintiff in fee simple said property described in said deed of trust to them, released from all claims and demands by reason of the same.

5th. That the plaintiff be allowed two years' time within which to make sales of all or any part of all of said properties, and said Elizabeth B. Hubbard, executrix, be decreed to specifically perform her contract in respect of releasing such portions as may be sold; and to that end that sales as made be reported to the court and upon

503 such reports, when and as made, the auditor of the court be authorized to report what would be a reasonable pro rata of the proceeds of sale to be paid to said executrix and, upon depositing in the registry of the court such pro rata, reported by the auditor, said trustees, W. W. Wright and George H. Wright, be required forthwith to execute and deliver a deed of release of the property sold from the operation of the deed of trust to them affecting the same.

6th. That said W. W. Wright and George H. Wright, trustees, be enjoined from selling or advertising for sale the real estate described in said deed of trust to them, "Exhibit G. B. S. No. 5."

7th. That he may have such other and further relief as the nature of the case may require and unto the court may seem meet and proper.

8th. That the writ of subpoena may issue directed to said defendants, Elizabeth B. Hubbard, executrix; W. W. Wright and George H. Wright, trustees; John D. Croissant and William A. Croffut, trustees; and Amos H. Wilson and John H. Pryor, trustees, commanding them etc.

GEO. B. STARKWEATHER.

WM. F. MATTINGLY,

*Sol. for Plaintiff.*

DISTRICT OF COLUMBIA, ss:

I, George B. Starkweather, do swear that I have read the foregoing bill of complaint by me subscribed and know the contents  
504 thereof; that the facts therein stated as of personal knowledge are true, and those stated upon information and belief I believe to be true.

GEO. B. STARKWEATHER

Subscribed and sworn to before me this 21st day of March A. D., 1896.

J. R. YOUNG, *Clerk,*

By R. J. MEIGS, JR., *Ass't Clerk.*

*Answer of Elizabeth B. Hubbard.*

Filed April 2, 1896.

In the Supreme Court of the District of Columbia.

GEORGE B. STARKWEATHER	} Equity. No. 17246, Docket 40.
<i>vs.</i>	
ELIZABETH B. HUBBARD ET AL.	

Now comes the defendant, Elizabeth B. Hubbard, by her solicitors Wm. W. Wright, Jr., and D. W. Baker, now and at all times hereafter, reserving all manner of benefits and advantage to herself of exception to the many errors and insufficiencies in said bill contained, for answer thereto or to so much thereof as this defendant is advised is material for her correct answer thereunto, answers and says:

1. She admits all that part of paragraph 1 in said bill relating to her residence, but says that, having settled the estate of the  
505 said Stephen A. Hubbard, deceased, she now holds the notes secured, as in said bill alleged, in her own right.

2. She admits all that part of paragraph 2 relating to the death of said Stephen A. Hubbard, that she was duly qualified as executrix, and that no copy of the will is on file with the register of wills; also the execution and recording of the said deed of trust to secure the sum of \$14,560.00, marked Exhibit "G. B. S. No. 2," and also the signature of the two releases in blank, but for what purpose said releases were signed defendant is ignorant thereof. As to the residue of the matter in said paragraph alleged, defendant has no knowledge thereof, and no information upon which to found a belief, and requires strict proof of the same.

3. Defendant for answer to the third paragraph of said bill says: She was well acquainted with the transactions between her husband and the complainant, and, of her own knowledge, says that from time to time her said husband advanced divers sums of money to said complainant, taking in return his, complainant's, promissory notes therefor, which said notes aggregated in all, together with principal and interest, as this defendant is informed and believes, the sum of \$14,560.00, the amount alleged in said complainant's bill, and secured as therein alleged. That in pursuance of her duties as executrix in settling the said estate, through her attorneys in Hartford, Conn., Messrs. Buck and Eggleston, and under the advice of the said W. W. Wright, of Washington, D. C., she employed Mr.

Robinson White, of Washington, D. C., an attorney at law, to  
506 advise her as to the collection of the said indebtedness of \$14,560.00, secured as aforesaid, but that said White had no authority whatever to perform any act or acts in regard to said indebtedness but was simply her adviser as to the collection of the

said indebtedness or the further security of the same. As to the residue of said paragraph, defendant has no personal knowledge and no information upon which to form a belief, and requires strict proof of the same.

4. Defendant answering the fourth paragraph of said bill, says: That in the year 1891, upon the representation of said complainant, that a large and valuable part of her security was in jeopardy and about to be sold under a first deed of trust given to secure an indebtedness of \$12,000.00, and believing the representations of said complainant, that a sale under this trust would greatly impair her security and practically wipe it out, at great sacrifice and trouble obtained the consent of the probate court of Hartford to sell the interest of the estate of the said Stephen A. Hubbard, deceased, in the Hartford Courant, which interest at the time was a dividend paying one, and, had it not been disposed of as aforesaid, would to-day be very valuable and a source of revenue to this defendant. With a part of the proceeds of this sale she paid the indebtedness secured by said first trust under which a portion of the property was about to be sold, thereby protecting her existing securities for the said amount of \$14,560.00, and, incidentally, preserving the equity of said complainant. That at the time said \$12,000.00 was advanced as aforesaid, this defendant under advice of counsel, and well knowing that

the said complainant was a great personal friend of Messrs. 507 Reinohl and Berryman, trustees under the deed of trust to secure the said indebtedness of \$14,560.00, and believing, upon information, that said complainant had influenced other trustees to delay a sale under the said first trust which defendant paid as aforesaid, and upon such information and belief, being unwilling to trust her security beyond her reasonable control, agreed to advance the said \$12,000.00 only upon condition that she be allowed to select her own trustees under the trust to secure said advancement, and also upon the further understanding that the said indebtedness of \$14,560.00, be embodied in a new trust with trustees of her own choosing. Upon these conditions and understanding, and no other, complainant executed two deeds of trust, as alleged in said bill, naming Messrs. Wright and Wright as trustees therein, one trust of \$12,150.00 to secure the amount advanced to pay off the said first trust under which a portion of the property was about to be sold, and another to secure the sum of \$15,652.00, which represented the first blanket trust of \$14,560.00 together with interest to date of new trust, to wit: March 10, 1891. Defendant denies that she ever agreed to release any part or parcel of the land covered by either of said trusts or that she ever authorized said Robinson White or any other person to enter into any such agreement or that there was any other agreement other than that provided by the said trusts. She is informed that her attorney, Mr. John R. Buck, gave said Robinson White to understand that when the complainant Starkweather might sell portions of the property he could submit the matter to Mrs. Hubbard's



attorneys, and they would consider it, and if, in their opinion, the purchase money fairly represented the value of the property sold, they would release that much, provided the whole purchase money was paid to be applied on the notes; and provided also that there were no circumstances connected with the sale which might injure the balance of the property unsold, but that they were to be the sole judges as to whether a proper amount was obtained for the portion sold or to be released, and of the propriety of the sale in all respects, and this was the understanding embodied in and sought to be expressed in said letter marked Exhibit "G. B. S. No. 6". That such statement was purely voluntary, without any consideration and delivered to said Starkweather after the execution of said deeds of trust, and entirely independent of the same. Defendant further says, upon information and belief, that complainant well knew the tenor and understanding of said letter, which was dated March 10, 1891, but that a long time thereafter, to wit: January 12, 1893, said complainant, for the purpose of making it appear that a different understanding was had, and for the purpose of using the same as a binding agreement with this defendant to release pro rate, etc., as in said bill alleged, made a memorandum in his own handwriting, purporting to have been made at the date of the said letter, presumed to acknowledge the same before a notary public, and placed the same of record, all of which appears by an examination of said exhibit. This defendant is informed that, through her attorneys, it was agreed that the old blanket trust of \$14,560.00 should be allowed to remain of record until certain judgments, at that time of record, were satisfied; but denies that there was any agreement or understanding that the new blanket trust of \$15,652.00 should be withheld from record until said old blanket trust was released. That the said deeds of trust referred to as Exhibits "G. B. S., Nos. 4 and 5," would have been recorded within six months from the date thereof, were it not for the fact that the said Starkweather, representing to her attorney the said John R. Buck that he was about to make a sale of his whole real estate business and that the recording of these said trusts might embarrass said sale, requested that the same be withheld from record until such sale was effected. After waiting for more than a year, this defendant, inasmuch as said sale had not been effected, and fearing to hold her said deeds of trust longer from record, caused the same to be recorded March 23, 1892. As to any other matters in said paragraph not herein specifically answered, defendant denies, and requires strict proof of the same.

5. Defendant answering the fifth paragraph of said bill denies that she ever refused to release first blanket trust of \$14,560.00, but on the contrary has ever been ready and willing to have the same released at any time since the recording of her said blanket trust given in lieu thereof, and that the note secured thereby has always remained in the possession of said Robinson White, ready to be cancelled when demanded, and said White was so instructed. As to

any other matters in said paragraph contained not answered therein, defendant denies and requires strict proof thereof.

6. Defendant has no personal knowledge of the sale in said paragraph alleged, but admits that on or about the time of said sale, complainant wrote her attorneys, Buck and Eggleston, of Hartford, Conn., asking them to release about one-half of her security upon a cash payment of only \$3,000.00 which was less than one-fourth of the amount secured thereon under the trust, and further proposed that they accept certain notes or other promises of said Croissant, as in said bill alleged. This proposition was so grossly inadequate, in that it only provided for a payment in cash for less than one-fourth of the amount secured, in payment of which complainant desired the release of one-half of the security, that it was not seriously considered by this defendant and her attorneys, and the proposition was accordingly refused. As to the residue of said paragraph, defendant has no personal knowledge and requires strict proof of the same.

7, 8 & 9. Defendant answering paragraphs 7, 8 and 9, says she has no personal knowledge whatever of the matter contained therein, and that the same have no relation between the disputes of complainant and defendant.

10. Defendant answering the tenth paragraph says upon information and belief, that some indefinite proposition came to her from Mr. Starkweather, in reference to selling a small portion of the mortgaged property, for the purpose of erecting a factory on it. That she refused to release the part indicated as she did not think that the establishment of a factory there would improve the rest of the property but on the contrary might injure it, and for the reason that she did not care to retail the property out in such small parcels.

Defendant says that she told Mr. Starkweather that when he could sell any considerable portion of the property, for a proper amount, she would confer with him about it, and consider the matter of releasing that portion sold, but that in the case of the piece sold for a factory, she did not consider it for the interest of the estate of S. A. Hubbard, the mortgagee to release it, and declined to do so. As to the rest of said paragraph defendant has no knowledge and requires strict proof of the same.

11. Defendant answering said eleventh paragraph, says, upon information and belief, that at the time said complainant began borrowing sums of money from said Stephen A. Hubbard, he was insolvent and that since that time any money complainant alleges to have put in or expended about said property was derived from sales of various parts thereof purchased with the money borrowed as aforesaid, that complainant, since the execution of the said deeds of trust marked Exhibits "G, B, 8, 4 and 5," has made large sales of the property affected by said trusts, aggregating in all the sum of \$80,122.80, all of which more fully appears in two certain deeds recorded respectively Libers. 1688 fol. 42, and 1724, fol. 112, certified copies of which marked Exhibits "G, B, 8, No 7" and "E, B, H,

No. 1," are filed in this cause and prayed to be read as part of this answer. That notwithstanding the large sums of money received by complainant on account of said sales, he has never paid a single dollar of principal or interest to your defendant in satisfaction of her said claims and upon demand of the same still refuses to make such payment. Defendant denies that complainant has been unable

to dispose of the said property as alleged in said bill, by  
 512 reason of the \$14,560.00 trust having remained of record, but, on the contrary, upon information and belief alleges that one

B. A. Simmons, a capitalist of Hartford, Conn., and well known to your defendant, acting for himself and two other investors, being desirous of investing in Washington real estate, did on or about January, 1891, offer to purchase the whole amount of property owned by said complainant, with full knowledge of the existing trust of \$14,560.00, and agreed to allow him, the complainant, \$10,000 cash over and above the amount of the incumbrances then existing, to assume and pay all incumbrances, and then as an additional consideration, allow the said complainant a one-fourth interest in the property so purchased, together with a certain yearly salary in compensation for his services in selling the same. Had complainant accepted said offer, defendant would have long ago received payment of her claims in full, and the said Starkweather would have succeeded in making an advantageous sale. As to defendant's refusal to carry out the alleged contract as in said paragraph alleged, she again expressly denies the existence or making of any such contract, nor has any money ever been tendered to this defendant or her attorneys as a pro rata payment of her liens or otherwise. In fact, no action whatever has ever been taken upon the part of complainant or his agents in regard to the settlement of defendant's claims, except the bare propositions as herein before alleged, which were entirely unsatisfactory and consequently refused. As to the other matters in said paragraph contained, defendant expressly denies and requires strict proof of the same.

513 12. Defendant admits all of paragraph 12 and says:

That, as complainant had never put the release of said old blanket trust on record, she caused the same to be released at her own expense in order that the property about to be advertised for sale should be in the best possible condition to invite good and *bona fide* bids. That for a like reason, and upon an examination by her attorney in Washington, and it appearing that the deed of trust recorded in Liber 1248, folio 437, which was the trust of \$12,000.00 under which a portion of the property was about to be sold as in said bill alleged, had not been released, although the notes secured under the same which this defendant bought by advancing \$12,000.00 as hereinbefore alleged, had been paid by the execution and delivery to this defendant of the deed of trust to secure \$12,150.00 referred to as Exhibit "G. B. S. No. 4," and being advised that it was for the best interests of the complainant, Starkweather, to have the same released of record, this defendant, at her own expense, caused a

release to be prepared by her attorneys and presented to the trustees under said trust of \$12,000 for the purpose of execution. She is informed and believes that one of the trustees Mr. William W. Boarman refused to execute any release because he had been enjoined by George B. Starkweather, complainant in this cause, by a certain bill for an injunction filed in this court in equity cause No. 12418. That pending said suit the notes mentioned in said trust were paid by this defendant, notwithstanding which the said Starkweather has not dismissed the said suit or caused said injunction to be dissolved, and said trustee considers himself still en-  
 514 joined from executing any release or performing any other act incident to said trusteeship. Thereupon your defendant, through her attorney William W. Wright, Jr., for the purpose of giving complainant an opportunity to have said trust released before a sale was had of the property, explained the propriety of such a release to the complainant, and to that end requested complainant Starkweather to sign an order directed to said trustees requesting them to release, whereupon said Starkweather refused. A copy of which order or request, marked Exhibit "E. B. H. No. 2," is filed herewith and prayed to be considered a part of this answer.

13. Her claim against the said property of which she desires a sale now amounts to the sum of \$35,902.55, and that according to the terms of the trust she has a perfect right to sell the whole or any part thereof, and is not compelled to restrict herself in any way whatever in selling the same. That a description of said property by metes and bounds is a long one, involving much expense in the advertising of the same, and that if she were compelled to sell the said land in parcels, this defendant would be put to great and unnecessary expense in advertising and in having surveys made of such parts or parcels in order to determine the boundaries thereof. As to the other matters in said paragraph alleged this defendant denies and requires strict proof of the same.

14. Defendant answering said 14th paragraph says that she does not desire any pro rata amount of any sale or sales as therein  
 515 proposed, but is content to abide by the provisions contained in said deed of trust under which she proposes to sell, and, in order to invite bids at said proposed sale, and for the purpose of preserving the equity of complainant, if any should appear, she caused the terms of sale to be those alleged in the said 12th paragraph of complainant's bill. In case the property before described were sold, complainant would not be entitled to any of the proceeds thereof over and above the amount of the said first trust, but that the same would have to be applied as a credit upon defendant's note for \$15,652.00 secured by the blanket trust, known as Exhibit "G. B. S. No. 5," which is a second trust upon the property about to be sold, and this defendant is ever willing and ready to make such application if there be any surplus over and above defendant's said claim.

15. And for a further answer to said bill, defendant says: That there is now due upon the property covered by defendant's deed of

trust under which she proposes to sell taxes for the years 1894, 1895 and 1896, now over-due and unpaid, and that the said property is now advertised for the non-payment of taxes for the year 1895. That the said taxes up to the 28 day of March 1896, amount in all to the sum of \$341.75, all of which more fully appears by an inspection of certain certificates of taxes together with tax bills filed in this cause, marked Defendant's Exhibits "E. B. H. No. 3," and prayed to be considered as a part of this answer. That unless your defendant is allowed to proceed to a sale under her said trust, her security will become much impaired by reason of

516 said tax liens and by reason of said tax sales. Further answering said bill your defendant denies the right of the complainant sought therein, because the said complainant is not the owner of all the property, covered by the deeds of trust which he desires to enjoin, and only owns a portion of the property advertised for sale, and of the particular property covered by said trust of \$12,150.00, he is the owner of only a portion thereof, to wit: About one-half, which in equity between the owners of the property, would be first subject to all the moneys due under the trusts mentioned in said bill of complaint.

Defendant having made full and sufficient answer unto complainant's bill, she prays the court, that the bill of complaint be dismissed, that the restraining order granted therein be dissolved, and that she may be forthwith *be* dismissed with her reasonable costs.

ELIZABETH B. HUBBARD.

WILLIAM W. WRIGHT, JR.,

D. W. BAKER,

Solicitors for the Defendant Hubbard.

CITY OF HARTFORD, )  
State of Connecticut, ) ss:

Elizabeth B. Hubbard, being first duly sworn deposes and says: that she has read the foregoing answer by her subscribed and

517 knows the contents thereof, and that the same is true upon my personal knowledge except those matters founded upon information and belief and as to those matters she believes it to be true.

Sworn and subscribed to before me this twenty-eighth day of March, 1896.

[NOTARIAL SEAL.]

JOHN H. BUCK,

*Notary Public.*

STATE OF CONNECTICUT, )  
Hartford County, ) ss:

I, C. W. Johnson clerk of the county of Hartford, and of the superior court of said State within and for said county, which is a court of record, and keeper of the seal thereof, do hereby certify that

John H. Buck esquire, before whom the annexed deposition or affidavit was taken, was at the time of taking the same a notary public within and for said State, duly appointed, commissioned and sworn, with authority by the laws of this State to administer oaths for general purposes and to take depositions and affidavits: that I am well acquainted with his handwriting and verily believe the signature to the said deposition or affidavit to be genuine.

In testimony whereof, I have hereunto set my hand  
[SEAL.] and the seal of said superior court, at Hartford, in said county, this 28th day of March A. D. 1896.

C. W. JOHNSON, *Clerk*.

518

*Affidavit of John R. Buck.*

Filed April 2, 1896.

I, John R. Buck, of the town and county of Hartford, State of Connecticut, on oath, do depose and say, that I am a lawyer by profession and that I am a member of the firm of Buck and Eggleston, attorneys-at-law, Nos. 3 & 4 Cheney block, in said Hartford, and that I have been a practicing lawyer for upwards of thirty years.

Early in the year 1890 I was retained as counsel and legal adviser by Elizabeth B. Hubbard, executrix of the will of Stephen A. Hubbard, late of said Hartford, deceased, said Elizabeth B. Hubbard, executrix, being the defendant with others in the case of George B. Starkweather *vs.* Elizabeth B. Hubbard *et al.*, now pending in the supreme court of the District of Columbia, being equity No. 17246, docket 40.

I first saw George B. Starkweather early in the year 1890, and conversed with him and Mrs. Hubbard in regard to a certain note dated December 2, 1889 and given by said Starkweather to the late Stephen A. Hubbard for the sum of \$14,560 being for money loaned to said Starkweather by said Hubbard at various times in different amounts, the whole sum being included in said note of \$14,560. The note was secured by a trust deed of real estate in the city of Washington including five pieces of land, one of which pieces was known as the 51 acre tract, being on the east bank of the east branch of the Potomac river in said Washington.

Several months afterwards, I think either in the month of  
519 August or September, the deeds, note and other papers connected with said loan came into the hands of the representatives of said estate of Stephen A. Hubbard. In June, 1890, at the suggestion of Mrs. Hubbard, the executrix, and of Mr. W. W. Wright, of Washington, I employed for and on behalf of the estate, Mr. Robinson White of the city of Washington, to represent the estate as adviser in said Washington.

Early in 1891 we found that there was a prior deed of trust rest-

ing on said 51 acre tract which secured the sum of \$12,000., and proceedings for a sale under said deed of trust *was* threatened, of which Mr. Starkweather informed the representatives of the estate of Stephen A. Hubbard, and suggested that the executrix would have to advance money to take up and pay for that trust in order to protect the so-called blanket mortgage of \$14,560. We appealed to Mr. Starkweather to take care of that loan secured by said trust deed for \$12,000. and protect the estate, as the estate could ill afford to advance the money to protect the blanket mortgage; but Mr. Starkweather neglected to take care of said trust or to do anything to protect the estate from the consequences of the sale under said trust deed which was then being threatened.

The result was that the estate was obliged to and did expend the sum of \$12,000. to take up and pay said trust to protect the first mortgage of \$14,560. This money was paid either in the latter part of February or the early part of March. This money was advanced for that purpose and for the benefit of Mr. Starkweather upon the condition that the executrix should select and have her own trustees under a new trust to secure said advancement of \$12,000.  
520 and upon the further condition and understanding that the said indebtedness of \$14,560. should be represented in a new trust, also with trustees of her own choosing. These were all of the conditions under which such advancement was made. No other condition was made in regard to that transaction nor was any agreement made to release parts of the property pro rata.

Mr. Starkweather was told soon afterwards that it was exceedingly desirable that these two large trusts should be reduced to money and paid over to the estate as soon as possible in order to forward the settlement of the estate of Stephen A. Hubbard here in said Hartford. Mr. Starkweather was also told that if he could sell portions of said property which secured said loans, to report such proposed sales to the representatives of the estate and it would be considered and decided then whether the estate would release the property which he should sell from the operation of either of said trusts. There was no other agreement as to the sales of portions of said property. Mr. Starkweather afterwards claimed that the estate had agreed to release portions of the property pro rata. But whenever he made any such claim either personally or by letter, it was promptly denied, and he was told over and over again that no such agreement was ever made. It was understood that if Mr. Starkweather should effect a sale of any piece mortgaged, he was to inform the representatives of the estate, and then they were to decide whether they would release that portion or not and upon what conditions. Each case of sale was to be decided by itself and at the time the sale was  
made.

521 Some time in March 1894 Mr. Starkweather made some inquiry as to releases of portions that he might sell.

In reply to these inquiries, by letter dated April 2, 1894, in which letter the following language occurs: "When your customer is

ready, please advise us, and then the administratrix of Mr. Hubbard's estate will decide whether she can release the portion you speak of. I do not understand that you can say what she is to release or how much, but that such points are subject to agreement by both parties, and I do not think Mrs. Hubbard will be unreasonable in the matter."

I received a letter from Mr. Starkweather dated April 2, 1894, relating to a release of certain portions which I understood he had sold or hoped to sell. In a letter dated April 5, 1894, and sent to Mr. Starkweather by myself, I used the following language: "You say you have a customer in sight and want to have us consent to release part of the property mortgaged, and we infer from your letter that the part you want released is that part of the 51 acre piece which Mr. Croissant and his friends did not purchase. Now, when you can indicate how much Mr. Hubbard's estate can realize from the contemplated sale, we have no doubt that we can at least make a decision, and that Mrs. Hubbard will deal justly with you. In your letter of the 30th March you make the following statement: 'I will now indicate rather than dictate what should be done on the materialization of the customer in a day or two. *Dictate* is sometimes an offensive word, although it is clearly my province to handle the customer and to indicate the property to be released on the tenor of an equivalent *pro rata*.' I deemed it proper to inform

522 you, in substance that it was for the holders of the mortgages to say how much they would release for a given sum, lest by silence you should infer that we conceded such a claim as your letter appeared to suggest \* \* \*. No harm can come of stating such things plainly and in such a way as to avoid any misunderstanding. We have never thrown any obstacle in the way of your making any sale from the day we first met you till the present time. Mrs. Hubbard and all her friends would be glad if you could effect a sale and pay her either in whole or in part, but it is impossible to say what can be done as to releasing any part of the property until we know what is sold and how much is to be applied on the mortgages."

After this letter Mr. Starkweather never made any further claim in regard to releasing portions of the property, so far as I personally know. So far as I know, he never made the sale referred to in my letter of April 5, 1894, and we never had an opportunity of getting any money as the proceeds of any such sale.

Mr. Starkweather, in April 1892, asked Mrs. Hubbard, the executrix, what she would be willing to do in case of a sale of one-half of the 51 acre tract, so called. It is my impression that he either bargained or actually sold one-half of said tract to Mr. Croissant and another gentleman. At that time Mrs. Hubbard, the executrix, offered to take \$10,000, as her share of the purchase money and release the part sold, being one-half of said 51 acre tract on which the trust deed to secure the sum of \$12,000 applied, but nothing came of this contemplated sale, so far as I know.



523 Reference is made in the bill of complaint to a letter received by Mr. Starkweather from Mr. Robinson White touching the matter of releases. In this connection I will say that I never authorized Mr. White to make any agreement whatever in regard to sales of portions of the property, and I am quite sure that he never understood that he had any such authority from me or from the executrix, and I have no doubt that he will so say if called upon.

JOHN R. BUCK,

CITY OF HARTFORD, )  
State of Connecticut, }

John R. Buck, being first duly sworn, deposes and says: that he has read the foregoing affidavit and knows the contents thereof, and that the same is true.

Sworn and subscribed to before me, this thirty-first day of March, 1896.

JOHN H. BUCK,  
Notary Public.

STATE OF CONNECTICUT, )  
Hartford County, ) ss :

I, C. W. Johnson clerk of the county of Hartford, and of the superior court of said State within and for said county, which is a court of record, and keeper of the seal thereof, do hereby certify that John H. Buck Esquire, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument,

524 was at the time of taking such proof or acknowledgment a notary public within and for said State, duly appointed, commissioned and sworn, with authority by the laws of this State to administer oaths, and take the acknowledgment of deeds and other instruments; that I am well acquainted with his handwriting and verily believe the signature to the said certificate or proof of acknowledgment to be genuine.

In testimony whereof, I have hereunto set my hand and the seal of said superior court, at Hartford, in said county, this 31st day of March, A. D. 1896.

[SEAL.]

C. W. JOHNSON, Clerk.



Hartford, State of Connecticut, and brings this suit in her own right.

2. The defendants, Andrew B. Duvall and Charles C. Cole, are sued as trustees under a certain deed of trust hereinafter mentioned; the defendants, John D. Croissant, and John O. Johnson, as trustees under a certain deed in trust hereinafter more specifically referred to; the defendants, John O. Johnson and David C. Reinohl, 527 as trustees under a certain deed of trust recorded in Liber 1596, folio 203; the defendants, Campbell G. Berryman and David C. Reinohl, as trustees, under a certain deed of trust, recorded in Liber 1411, folio 412; the defendants, William W. Wright and George H. Wright, as trustees under a certain deed of trust, recorded in Liber 1654, folio 361. All of said defendants being residents of the District of Columbia, except George H. Wright, who is a resident of the State of Maryland.

3. That heretofore to wit, on the 29th day of January 1889, one George B. Starkweather, and wife, being the owners in fee of a certain piece of property known as "part of Padsworth," in the District of Columbia, hereinafter more particularly described, by their certain deed of trust, recorded in Liber 1365, folio 248, conveyed the same to the defendants, Andrew B. Duvall and Charles C. Cole, in trust to secure a certain indebtedness of seven thousand five hundred and fifty-three dollars and thirty-four cents, (\$7,553.34), being the balance of the purchase money, a more particular description of which said property is set forth in said deed of trust, which your complainant asks leave to refer to upon the bearing.

4. Thereafter the said George B. Starkweather and wife, by their certain deed of trust recorded in Liber 1411, folio 412, further conveyed the said property to the defendants, Campbell G. Berryman and David C. Reinohl, in trust to secure one, H. W. T. Jenner, for a certain alleged indebtedness of two thousand five hundred dollars (\$2,500). Which said deed of trust your complainant asks leave to refer to.

528 5. Thereafter the said George B. Starkweather and wife, by their certain deed of trust recorded in Liber 1596, folio 203, conveyed the said property to the defendants, John O. Johnson and David C. Reinohl, in trust to secure one, Victor Mindehoff, for an alleged indebtedness of six thousand five hundred dollars (\$6,500). Which said deed of trust your complainant asks to refer to.

6. Thereafter the said George B. Starkweather, and wife, by their certain deed of trust, recorded in Liber 1654, folio 361, conveyed the said property to the defendants, William W. Wright and George H. Wright, in trust to secure a certain indebtedness to your complainant in the sum of fourteen thousand five hundred and sixty (\$14,560) dollars, which said indebtedness is still unpaid and a lien upon the property in said deed of trust described.

7. Thereafter the said George B. Starkweather and wife, by their certain deed in trust, recorded in Liber No. 1724, folio 112, con-

veyed the said property to the defendants, John B. Croissant and John O. Johnson, in trust for the benefit of certain contributing purchasers, whose names and addresses are unknown to your complainant.

8. That since the date of the last named conveyance, the indebtedness secured by the two deeds of trust, described in paragraphs 4 and 5, has been fully paid and satisfied, the notes described therein having been duly canceled and surrendered to the maker, George B. Starkweather, and releases of said trusts have been duly executed, all of which more fully appears from the answer of  
529 said John B. Croissant and John O. Johnson, in response to a certain bill for discovery filed by said George B. Starkweather, against the said Croissant, Johnson *et al.*, filed in this court on the 13th day of July, 1895, in equity cause No. 16612, in which said answer, under oath, the said defendants, Johnson and Croissant, admit as follows "And the complainant, Starkweather, has received the notes marked paid and canceled secured by deeds of trust, recorded in Libers 1411, folio 442, and 1596 folio 203," also further in said answer, the said trustees, Croissant and Johnson, speaking of their action as trustees for certain contributing purchasers under a deed in trust, heretofore referred to, make the further admission "And have caused to be released the trusts recorded in Libers 1411, folio 442, and 1596 folio 203." Upon information and belief, your complainant further alleges that the releases of these said trusts were delivered to the defendants, John O. Johnson and John D. Croissant, who have failed to place the same of record, and refused to do so.

9. By reasons of the withholding of these said releases from record, the title of your complainant is seriously and injuriously affected, inasmuch as it appears from the land records of the District of Columbia, that she has only a fourth trust or lien upon the said described property, whereas in fact she holds a second lien upon the same.

10. On the 13th day of November, 1897, the defendants, Andrew B. Duvall and Charles C. Cole, according to the power granted  
530 them, as trustees, after due advertisement, etc., sold the said property at public auction to one, George E. Ricker, at his bid of \$24,100 and received as a deposit on account of said sale the sum \$1000 at the time of sale and \$600 thereafter, in all \$1,600.

11. Thereafter on the 3rd day of February, 1898, the said purchaser, George E. Ricker, having defaulted in complying with the terms of sale, the said trustees, Charles C. Cole and Andrew B. Duvall, again sold the property at public auction after due advertisement etc., to one, Herbert W. T. Jenner, for the sum of \$17,100, which said sale has been duly consummated according to the terms thereof.

12. On May 21st, 1898, the said trustees, Duvall and Cole rendered an accounting to your complainant, through her attorney, W. W. Wright, Jr. wherein it appears that they have paid

themselves commissions in excess of those provided for in said deed of trust under which the said property was sold to wit, out of the deposits on first sale they have paid themselves 80 % of full commissions upon \$24,100, the amount of said first sale, and also full commissions upon \$17,100, the amount of the second sale, the said excess amounting in all to about \$1000.

13. Your complainant further says that the said deeds of trust described in paragraphs 4 and 5 having been duly released and the indebtedness secured thereby having been fully paid, satisfied, and the notes surrendered to the maker, she is entitled to all of the surplus arising from said sale or sales over and above the amount of the debt secured thereby together with proper commissions, expenses, etc., but that the trustees and alleged beneficiaries under the said deeds of trusts described in paragraphs 4 and 5 are claiming an interest in said surplus and your complainant is afraid the said trustees, Duvall and Cole, may turn the same over to them.

14. Wherefore, in order that the equity of your complainant may be protected and a proper account rendered of the proceeds arising from the sales of this property, your complainant prays as follows:

*Prayers.*

1. That writs of subpoena may issue out of and under the seal of this honorable court, directed to the defendants, Charles C. Cole, Andrew B. Duvall, David C. Rienohl, John O. Johnson, John D. Croissant, Campbell G. Berryman, William W. Wright, and George H. Wright, compelling them to enter their appearance in this cause and answer unto the exigencies of complainant's bill.

2. That the cause be referred to the auditor to state a proper account of the proceeds arising from sales under deed of trust wherein the said defendants, Andrew B. Duvall and Charles C. Cole, are trustees.

3. That the defendants, Andrew B. Duvall and Charles C. Cole, be decreed to pay over the surplus arising from said sales to your complainant.

532 4. That the defendants, John O. Johnson and John D. Croissant, be compelled to place upon record the said releases in their possession.

5. And for such other and further relief as to this honorable court may appear meet and proper.

ELIZABETH B. HUBBARD.

WILLIAM W. WRIGHT, *Solicitor.*

CITY AND COUNTY OF HARTFORD, )  
State of Connecticut. i

I do solemnly swear that I have read the foregoing bill by me subscribed and know the contents thereof, and that the allegations

therein are true, except those matters founded upon information and belief which I believe to be true.

ELIZABETH B. HUBBARD.

Sworn and subscribed to before me this 21st day of October, 1898.

JOHN H. BUCK,  
*Notary Public.*

[NOTARIAL SEAL.]

533 *Joint Answer of Andrew B. Duvall and Charles C. Cole.*

Filed Feb. 9, 1899.

In the Supreme Court of the District of Columbia.

ELIZABETH B. HUBBARD, Complainant,	} Equity. 19856.
<i>vs.</i>	
ANDREW B. DUVALLE ET AL., Defendants.	

To the honorable justice of said court, holding a special term in equity:

The joint answer of the defendants Andrew B. Duvall and Charles C. Cole, two of the defendants in the above named suit to the bill of complaint in said cause.

The said defendants for answer to said bill say:

1, 2 & 3. That they admit the allegations contained in paragraphs 1, 2 and 3 to be true.

4, 5, 6 & 7. That while they have no personal knowledge of the allegations contained in paragraphs 4, 5, 6 and 7 of said bill, they believe the allegations contained in said several paragraphs to be true as therein set forth.

8. These defendants do not know and cannot admit that the indebtedness secured by the two deeds of trust, described in paragraphs 4 and 5 of said bill, has been paid and satisfied, as alleged in the eighth paragraph of said bill, nor do they know whether the notes described therein have been cancelled and surrendered to the

534 maker, or whether releases of said trusts have been executed, as in said paragraph alleged; nor have they any knowledge of the record or proceedings in equity cause No. 16,612 referred to in said paragraph, and in respect of all the matters and things in said paragraph alleged, the said defendants pray that the complainant may be required to make full and satisfactory proof.

9. Answering the allegations of the ninth paragraph of said bill these defendants say that they have no knowledge of the allegations contained therein and demand full proof thereof.

10. Answering the tenth paragraph of said bill these defendants say that on or about the 13th day of November, 1897, acting under and pursuant to the authority vested in them by the deed of trust

mentioned in the third paragraph of said bill, they sold the property in said deed of trust mentioned at public auction, giving notice of such sale as required by the terms of said deed of trust, and that George E. Ricker being the highest bidder therefor became the purchaser of said property at the price of \$24,100.00; that he paid to these defendants as a deposit on account of said sale the sum of \$1,000 for which these defendants gave him a receipt containing a memorandum of the terms of sale to him. The said purchaser having failed to comply with the terms of sale within the time specified in the said notice of sale, these defendants insisted upon his complying therewith, whereupon the said Ricker claimed that in purchasing said property he had acted for and on behalf of one George R. Starkweather, to whom he subsequently assigned the receipt and memorandum of sale above mentioned, and the said Stark-

535 weather requested of these defendants further time in which to comply with the terms of sale, and, in order to obtain an extension of one week's more delay in which to comply with the terms of sale, he paid to these defendants the sum of \$300, to wit, on the 8th day of December, 1897; that the said Starkweather having failed to comply with the terms of sale within the time so extended and being pressed by these defendants to comply therewith, he asked further indulgence and, as an inducement thereto, paid to these defendants the further sum of \$300, to wit, on the 16th day of December, 1897. These defendants granted the additional time, not only in consideration of the two sums of \$300 each, which were paid to them as aforesaid, but in further consideration that they believed that an advantageous sale of the property had been made and they desired to secure compliance with the terms of said sale, and for that reason gave the purchaser the additional time requested by him.

After becoming convinced that the said purchaser could not or would not comply with the terms of said sale, these defendants proceeded in accordance with the terms of the advertisement under which the said sale was made to advertise the property for sale on the 19th of January, 1898 at 4 o'clock p. m., at the risk and cost of the defaulting purchaser; and thereupon they at once gave the said defaulting purchaser notice that they had advertised the property for sale at his risk and cost, said notice being given on the same day that the notice of sale was first published. Thereupon, to wit, on the 19th

day of January, 1898, the said George E. Ricker filed his bill in  
536 the supreme court of this District against these defendants and one Susan Gaither, who was alleged to be the beneficiary in the trust under which the said sale was originally made, praying for an injunction to restrain these defendants from making the sale so advertised by them to be made on the 19th day of January, 1898, alleging in his bill that these defendants could not make good and perfect title to said real estate so sold by them, and among other things alleging that the said real estate had been sold at public auction for taxes, and that four several tax deeds had been given by

the Commissioners of the District of Columbia to one Herbert W. T. Jenner, who, it was alleged, by virtue of these deeds claimed said property; and a restraining order was granted as prayed for in said bill, all of which will more fully and at large appear by reference to the papers in said suit, being equity cause No. 18,969, equity docket 43 of this court, which defendants beg leave to refer to and read as a part of their answer to the bill in this cause.

These defendants thereupon employed counsel to answer the said bill of the said Ricker against them and such answer was duly prepared and filed, in which it was alleged, amongst other things, that a release of the said several tax deeds had been obtained from said Jenner and the said Rucker and Starkweather duly notified thereof before the second sale of said property was advertised, and that these defendants were able and ready to convey to the purchaser at said sale, so made by them under the deed of trust aforesaid, a good

537 title to the said property, upon his complying with the terms of said sale; and, upon motion of these defendants, the restraining order aforesaid was discharged, and these defendants proceeded to make sale of the said property, to wit, on the 3rd day of February, 1898, the sale of said property having been postponed on account of the restraining order aforesaid.

11. That on the 3rd day of February, 1898, pursuant to notice theretofore published, these defendants proceeded to sell said property at the risk and cost of the defaulting purchaser, and Herbert W. T. Jenner, being the highest bidder therefor, became the purchaser thereof at the sum of \$17,100.00; that he complied with the terms of sale by paying to these defendants \$1,000. at the time of sale and subsequently, to wit, on the 12th day of February, 1898, the sum of \$1,700.00 in cash, and on the same day he executed to them his two notes for \$5,700.00 each payable in one and two years after date respectively, with interest from date, at the rate of six per centum per annum, the interest payable semi-annually, and secured said notes by deed of trust upon said premises.

12. That these defendants immediately after the terms of said last mentioned sale were complied with, made up a statement of both of said sales, viz, the sale to George R. Starkweather through his agent and assignor, George E. Ricker, showing the amount of money received by them on account of said sale and how the same was disbursed; and the sale made on February 3rd, 1898, to the said Herbert W. T. Jenner showing the amount of money and notes received by them from the said Jenner and how the cash payment

538 received from him was by them disbursed. A copy of the statement of said former sale is filed herewith marked "Exhibit A;" and a copy of the statement of the latter sale is also filed herewith marked "Exhibit B;" and these defendants pray that the said two statements may be taken and considered as a part of their answer to the bill in this case. A copy of said statements was delivered on the 14th day of February, 1898, to the said Jenner and to all other parties interested in said sale, except the complainant,



who, according to the record, was not interested in the disposition of the proceeds of either of said sales, the former deeds of trust not having been released, and these complainants having no knowledge that they were paid off; but afterwards, to wit, on or about the 21st day of May, 1898, upon the application of the complainant through her attorney W. W. Wright, Jr., these defendants gave him a copy of said statements.

These defendants further answering the allegations of said 12th paragraph deny that the commissions retained by them, as shown by the said statements, are in excess of those provided for in the said deed of trust under which the property was sold, but they say that the said commissions so retained by them were legally and justly due them; and they further say that not only were the commissions which they retained legal and proper under the facts and circumstances, but they are advised and believe and so answer that they are entitled to other and further compensation for services rendered by them in perfecting the title to the said real estate in order to convey a good title thereto to the purchaser at the first sale by negotiating for and procuring a conveyance from the said Herbert

539 W. T. Jenner, of his right, title and interest in said property claimed by him by virtue of his purchase of said property for taxes and the several deeds of conveyance made to him by the Commissioners of the District of Columbia, hereinbefore more particularly mentioned, as well as for the expenses, including counsel fees, incurred by these defendants in answering the said bill for injunction filed against them by the said George E. Ricker, as hereinbefore set forth, and procuring the discharge of the restraining order obtained by him in said suit. These defendants upon information and belief answer and aver that the care, time, trouble and expense devoted by them to perfecting the title to said property and defending the said equity suit in the interest of the creditors secured by the several deeds of trust in the complainant's bill in this case mentioned, were not such services as is required of them under and by virtue of the deed of trust in the third paragraph of the complainant's bill mentioned, and that they are justly entitled to a proper allowance for their time, trouble and expense in relation thereto in addition to the commissions charged and retained by them out of the proceeds of the two sales made by them, as hereinbefore fully set forth.

13. These defendants are not informed whether it be true or not, as alleged in paragraph thirteen of the bill, that the deeds of trust described in paragraphs four and five of said bill have been released, or whether the indebtedness secured thereby has been fully paid and

540 satisfied, or whether the notes have been surrendered to the maker; and they demand that the complainant be held to strict proof of each and all of said averments. These defendants have not paid any portion of the indebtedness secured by the said deeds of trust described in said fourth and fifth paragraphs. The cash payment was not sufficient to pay the debt secured by the

trust mentioned in paragraph three of said bill, under and by virtue of which the first sale, hereinbefore mentioned was made. Since the filing of the bill in this cause, to wit, on the 3rd day of February, 1899, the note for the first installment of the purchase money was paid by the said Herbert W. T. Jenner, together with the interest thereon, as well as interest upon the other purchase money note, amounting in all to the sum of \$—; and these defendants have not yet paid out of the same the balance due upon the debt secured by the said deed of trust in the third paragraph of the said bill mentioned, but when paid they will have in their hands the balance, to wit, the sum of \$— to be disbursed according to the orders and decrees of the court to be made in this cause. The remaining purchase money note of \$5,700.00, which will be due on the 3rd day of February, 1900, remains in the possession of these defendants subject to such order or decree as the court may make in this cause.

These defendants having fully answered the bill of complaint, pray to be hence dismissed with their costs.

ANDREW B. DUVALL.  
CHAS. C. COLE.

W. L. COLE,  
*Counsel for Def'ts.*

541 DISTRICT OF COLUMBIA, ss.

We, Andrew B. Duvall and Charles C. Cole, being duly sworn, say that we have read the foregoing answer by us subscribed and know the contents thereof, and that the allegations therein contained are true, except those matters stated upon information and belief which they believe to be true.

ANDREW B. DUVALL.  
CHAS. C. COLE.

Subscribed and sworn to before me this — day of — A. D., 1899.

*Report of the Auditor.*

Filed Feb. 27, 1900.

In the Supreme Court of the District of Columbia.

ELIZABETH B. HUBBARD	}	No. 19856, Equity Docket 45.
vs.		
A. B. DUVALL ET AL.		

This cause is referred to the auditor "to state the account of the trustees under the deed of trust referred to in the bill of complaint," meaning the deed executed on the 29th of January, 1889, and recorded in Liber 1365, folio 248, of the land records of the District. After due notice I proceeded under this order of reference and return

herewith the depositions, vouchers and exhibits filed and submitted in proof.

542 The pertinent facts are the following :—The deed of trust referred to, conveyed to the defendants Duvall and Cole, the property described therein, located in the District of Columbia, in trust to secure the payment of the note of George B. Starkweather for the sum of \$7,553.34, payable four years after date, with interest payable semi-annually. On or about the 13th. of November 1897, the trustees (grantees in the said deed), by direction of the holder of the said promissory note and after due notice, offered the said property for sale at public auction and it was then and there struck off to one George E. Ricker upon a bid of \$24,100.00, he making a deposit of \$1,000.00.

The terms of sale not being complied with, the trustees called upon the said Ricker for completion of the purchase, in reply to which he asserted that his purchase was made on behalf of the said George B. Starkweather to whom he had assigned the receipt and memorandum of sale. Further time to comply with the terms of sale was requested and the trustees granted an extension for one week in consideration of the payment to them of \$300.00, the said payment being made on the 8th. of December. A second extension of time was requested and the trustees granted the same in consideration of another sum of \$300.00. The purchaser still failing to comply with the terms, the trustees proceeded to re-advertise the property for sale at the risk and cost of the defaulting purchaser, such sale to take place on the 19th. of January 1898.

On the latter date the said George E. Ricker filed a bill of complaint in cause No. 18,969 equity, in this court, praying an injunction to restrain the trustees from making the sale so advertised by them to be made. The bill also made as defendant 543 one Susan Gaither as the holder of the note secured by the deed of trust. A preliminary order was made restraining the defendants from proceeding with the sale and the trustees on the 26th. of January made answer and defended the suit. Upon hearing of the case the court made a decree discharging the restraining order and denying the complainant's prayer for injunction. On the 3d. of February 1898, the trustees proceeded to resell the property and sold the same for the sum of \$17,100. that being the highest genuine bid. The purchaser at this sale complied with the terms by paying one-third of the price in cash and delivering his two notes each for a like sum and payable respectively in one and two years after date with interest.

The bill in this cause calls upon the defendant trustees for an account and the trustees with their answer file a statement of their proceedings and an account of their expenditures and charges. This account is further elaborated in the present reference and certain exceptions are made to credits claimed by the trustees both for expenditures and for their own charges. The trustees charge themselves with the several sums received from the purchaser or his

assignee on account of the first sale and claim credit for payment of charges of the auctioneer together with the costs of publication of the notice of sale and a charge of five per cent. on the gross amount of the sale, as their commissions under the terms of the deed of trust. Exceptions are made by the counsel for the com-

544 plainant, to the allowance and payment to the auctioneer and to the charge of trustees' commissions, on the ground that the sale was not consummated and the trustees are not entitled to such commission, and second, that the auctioneer is not entitled even upon a completed sale, to commissions as charged by him and allowed by the trustees, and especially that the auctioneer is not entitled to such commissions upon this uncompleted or attempted sale.

In connection with these claims and exceptions it must be noted that both the trustees and the auctioneer claim a similar rate of commissions upon the sale made in February, 1898 thus in fact making duplicate commissions and charges upon what was in its results a single sale.

The deed of trust in question contains no provision for compensating the trustees for an offer of the property or an unsuccessful attempt to sell. It clearly contemplates a sale which results in the receipt and appropriation of the proceeds.

Upon the facts established and after a careful examination of the authorities referred to by counsel, I am of the opinion that the trustees are not entitled to commissions on the amount bid by Ricker at the first offer of the property. They are however, entitled to a commission upon the entire amount realized from the property through the several attempts to sell and the consummated sale. I am also of the opinion that they are entitled to an additional allowance for extra services rendered in efforts to realize the full benefit of the liberal bid of Ricker at the first sale, also for defending the suit brought by Ricker to enjoin the resale and in relieving the property from the encumbrance of outstanding tax deeds and certificates of tax sales. These are set forth in the answer of the trustees

545 and in the proof.

The allowances to the auctioneer as reported by the trustees, are made up of commissions on the bid of Ricker at the first sale, computed at the rate specified by "act of assembly of June 20th. 1872." Also a charge of \$20.00 for each of the three intended offers of resale, the property not being offered on either occasion, and another commission on the amount of the sale to Jenner which was consummated.

The "act of assembly" providing for a license or tax to be paid by auctioneers, provides that they shall pay a tax on gross receipts, of one-fourth of one per centum except sales made by order or decree of any court; and the rates of charges on the sale of real estate at public auction shall be five per cent. on the first \$200.00, two per cent. on the next \$1,000.00 and one per cent. on all amounts in excess of that sum.

It is contended by counsel for the complainant that this "act" does not apply to sales made by trustees under a deed of trust, the only function of the auctioneer in such case being to cry the property or invite bids from persons present at the time of sale. This statement of the auctioneer's work seems to be true as by the deed all duty and responsibility are devolved upon the trustees personally. In reply to this argument it is urged that as the deed of trust directs that from the proceeds of sale the trustees shall pay all proper costs, charges and expenses, they are authorized to employ the services of an auctioneer and that when so employed he is entitled to the amount prescribed by the "act."

546 The question here presented is one of considerable importance inasmuch as it seems to be a common practice and one of long standing, for trustees making sales under deeds of trust to employ auctioneers and allow and pay them the commissions prescribed by the "act of assembly." In the absence of such argument as the gravity of this question merits I hesitate to establish a precedent so far as this office is concerned, by the determination of the relative right of the parties on this point, in this report. It appears that the auctioneer in this case performed services not strictly within the line of duty as a crier at the sale and in view of the peculiar circumstances and conditions of the case I have concluded to allow as compensation for these services in their entirety, the sum named in the accompanying schedule of account, being practically equivalent to one commission computed under the "act of assembly" upon the amount of money realized from the attempted sale to Ricker and the completed sale to Jenner, both being treated as the results of one sale. I am clearly of the opinion that in any event the auctioneer would not be entitled to commissions upon the amount for which the property was struck off at the first sale or to any allowance for the notices given by the trustees that the property would be reoffered on the three occasions following the first attempt to sell.

The account of the trustees stated in accordance with these views, will be found in Schedule A, and a statement of distribution, first in satisfaction of the indebtedness secured by the deed of trust, and next on account of the claim of the complainant, will be found in Schedule B.

JAS. G. PAYNE, Auditor.

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## SCHEDULE A.

*Account of Andrew B. Duvall and Charles C. Cole, Trustees.*

## DR.

To deposit received from George E. Ricker on sale of November 13, 1897.....	1,000.00
amount received from purchaser subse- quently for postponements of sale on two occasions.....	600.00
proceeds of sale to Herbert W. T. Jenner February 3, 1898—17,000.00—	
cash payment.....	5,700.00
note at one year paid.....	5,700.00
note at two years paid.....	5,700.00
interest collected on notes.....	1,026.00
	<hr/>
	18,126.00
	<hr/>
	\$19,726.00

## CR.

By Evening Star notice of first sale.....	78.75	
court record ditto .....	1.00	
postal cards ditto .....	3.00	
sign ditto .....	4.00	
local notice in Evening Star.....	5.00	
Evening Star, notices of resale .....	154.63	
court record ditto .....	3.00	
postal cards ditto .....	8.75	
local notices of same .....	15.00	
Evening Star, notice of last sale .....	66.25	
court record ditto .....	1.00	
	<hr/>	
Carried forward .....	340.38	19,726.00

548 SCHEDULE A—Trustees' Account (Continued).

Brought forward ..... \$19,726.00

## CR.

By amount brought forward .....	340.38
postal cards, notice of last sale.....	2.75
sign, ditto .....	2.40
local notices .....	7.50
paid H. W. T. Jenner for conveyance of title .....	200.00
paid same to redeem from tax sale of 1895..	79.81
paid same to redeem from tax sale of 1896..	72.21

paid taxes for 1897 and first half of 1898 (fiscal years)—		
On 5.22 acres .....	28.34	
On sublots 46, 47 & 48 .....	14.79	
		43.13
Duncanson Brothers allowance for all serv- ices rendered in the matter of offers and sales .....	204.00	
trustees' commissions 5 per cent. on \$19,726.00 .....	986.30	
allowance to trustees for extra services (see report).....	850.00	
costs of suit.....	60.60	
auditor's fees.....	35.00	
		<u>2,884.08</u>
		\$16,841.92
notices of sale for Dec. 8 1897 omitted.....		65.25
		<u>\$16,776.67</u>

JAS. G. PAYNE, Auditor.

549

## SCHEDULE B.

*Distribution.*

Balance from Schedule A.....		\$16,776.67
To Thomas H. Gaither trustee—		
Note of George B. Stark- weather, January 29, 1889...	7,553.34	
Interest from January 29, 1889 to Feb. 12, 1898 .....	470.80	
	<u>8,024.14</u>	
Paid by trustees.....	4,180.95	4,180.95
	<u>3,843.19</u>	
Interest to August 4, 1898.....	111.45	
	<u>3,954.64</u>	
Paid by trustees.....	342.00	342.00
	<u>3,612.64</u>	
Interest to Feb. 11, 1899.....	114.38	
	<u>3,727.02</u>	

To Elizabeth Hubbard—

Note of George B. Starkweather March 10, 1891.....	15,652.00	
Interest to Feb. 20, 1898.....	6,526.88	

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22,178.88

Credit Feb. 20, 1898.....	3,398.62	
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19,780.26

Interest on principal to February 20, 1900 .....	1,878.24	
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21,658.50

Balance of fund to this.....	8,526.70	8,526.70
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Balance due of note February 20, 1900.....	13,131.80	
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\$16,776.67

JAS. G. PAYNE, Auditor.

550

HUBBARD }  
vs. }  
DUVALL }

January 15th, 1900—3 o'clock p. m.

Hearing pursuant to notice. Baker & Wright for the complain-t, Mr. Donaldson for the defendants.

ANDREW B. DUVALL having first been duly sworn testified as follows:

By Mr. DONALDSON:

Q. Mr. Duvall, you are one of the defendants in this case? A. Yes, sir.

Q. And you and Charles C. Cole the other defendant, in this case, are the trustees in the trust from George B. Starkweather and wife, dated the 29th of January, 1889? A. Yes, sir.

Q. Will you kindly state the transactions which took place in the sale by you and Mr. Cole, as trustees? A. We first advertised this property for sale under the deed of trust, the sale to take place on November 13th 1897. We attended on the premises and offered the property for sale. There was competent bidding, the parties interested in the subsequent deeds of trust were present and bid upon the property: Mr. S. H. Giesey representing the syndicate interested in the property and Mr. W. W. Wright Jr. was present representing the so-called Hubbard trust. The property was finally knocked down to George E. Ricker at the price of \$24,100.00. He paid



to us a deposit on account of the sale, of \$1,000.00 that  
 551 being the amount mentioned in the advertisement. Mr.

Ricker failed to comply with the terms of the sale within the period of time provided in the advertisement and the trustees insisted upon his compliance. I called upon Mr. Ricker in behalf of the trustees, on several occasions and he represented that he had purchased the property for George B. Starkweather and had sent the receipt and memorandum of sale we had given him, to Mr. Starkweather. There was nothing said at the time of purchase, by Ricker, of Starkweather's interest. Starkweather was present at the sale. The terms of sale were not complied with in accordance with the agreement and we again advertised the property for sale on December 8, 1897, at the risk and cost of the defaulting purchaser, all of which appears in the advertisement of sale, and I immediately gave notice to Ricker and Starkweather, that we had advertised this property for sale at the risk and cost of the defaulting purchaser. That notice was given on the same day that the notice of sale was first published. This notice was dated November 29, 1897, and on that day we served the original of this notice on George E. Ricker in his office in the Ohio National Bank building. I file herewith a carbon copy of the notice served upon him. (Filed and marked "Exhibit Duvall # 1). On December 3d, 1897 a similar notice was served upon Mr. Richer, of the advertisement and resale of the property. It was to take place December 8, 1897. I file herewith a carbon copy of this second notice. (Copy filed marked "Exhibit Duvall 2.) Mr. Starkweather then called upon us and requested an extension of time within which to comply with the terms of sale.

552 we communicated with Mrs. Gaither who was the party secured under the deed of trust and she had no objection to such arrangement, and upon the payment to us of \$300.00 we agreed to give him an additional week to comply with the terms of sale. He failed to comply within that time and a similar arrangement was made by which on the payment to us of \$300.00 on December 16, 1897, we granted an additional time. We did this upon the conviction that we had made a genuine sale and were desirous of closing the sale according to the terms.

On January 19th, 1898, Mr. Geo. E. Ricker filed a bill in equity No. 18,969, the day on which the property was to be sold, against C. C. Cole and myself and Susan Gaither, alleged to be the holder of the note secured by the deed of trust.

The object of this bill was to enjoin us, as trustees, from making the sale advertised for that day, the allegation of the bill being that we could not make and give a perfect title to the real estate, among other things alleging that the property had been sold at public auction for taxes, that there had been four tax deeds outstanding given by the Commissioners of the District of Columbia to Herbert W. T. Jenner, who it was said claimed the property under the tax deed, and a restraining order was issued and the sale was postponed. We filed answer to the bill, answering among other things, that we had

obtained the release from Jenner, of those tax deeds and that the complainant Ricker and Mr. Starkweather, were duly notified of that fact before the advertisement of the second sale of the property and that we were able and ready to convey to the purchaser a good  
553 title upon his complying with the terms of sale.

The proceedings in that cause No. 18,969 are offered in evidence. There was a hearing and the case was argued and the restraining order was discharged. We then as trustees, proceeded to make the sale of the property on February 3d, 1898, having postponed it on account of the issuance of the restraining order. On February 3d, 1898, we attended in front of the premises and proceeded to sell the property at the risk and cost of the defaulting purchaser, as appears from said advertisement. There was a good attendance present on that occasion, Mr. Giesey representing the syndicate interested in the property and W. W. Wright representing Mrs. Hubbard under the second trust, and others who bid upon the property. After a number of competitive bids we sold the property to Herbert W. T. Jenner at \$17,100.00. Mr. Jenner complied with the terms of sale, paying \$1,000.00 deposit and afterwards on February 12th, 1898, paying the sum of \$4,700.00 in cash and giving us his two notes for \$5,700.00 each, payable in one and two years after date, with interest at the rate of 6 per cent per annum, payable semi-annually, said notes being secured by deed of trust upon the premises.

Immediately after Mr. Jenner complied with the terms of this sale Judge Cole and myself as trustees, made up a statement of both of the sales, that is to say, the sale to Starkweather through his agent Ricker, showing the amount of money received by them on account of the said sale and showing how the amount was distributed, and also the sale made February 3d, 1898, to H. W. T. Jenner, showing  
554 the amount of money and notes received by us from Jenner and the disbursement of the cash payment received from him.

A copy of these two several statements, was filed with our answer in this cause marked Exhibits "A" and "B." On the 21st. of May 1898 we delivered a copy of these statements to Mr. W. W. Wright Jr. attorney for Mrs. Hubbard the complainant here. Mrs. Hubbard was the beneficiary in the second deed of trust. I filed vouchers for the disbursements made by us, being three accounts by Duncanson Brothers dated respectively November 13th, 1897, January 19th, 1898 and February 3d, 1898. The bills of Duncanson Brothers are for the payment of advertising, auctioneer &c. are filed. We paid the advertising bills in full under the first sale and there remained an insufficient amount to pay the other expenses so that to the auctioneer and the trustees there was a payment of 80%. As was set up in our answer to the Ricker bill, we negotiated for the tax titles held by Mr. Jenner under four tax deeds, and secured from him a quit claim upon agreeing to pay him \$200.00. This enabled us to make a good and valid title to the purchaser. Mr. Jenner had also purchased the property at the tax sales of 1895 and 1896 and we redeemed the property from those two tax sales and paid the current

taxes against the property as stated in our Exhibit "B." Mr. Jenner paid the subsequently accruing installments of interest and paid the note at one year; he has so far complied with the terms of the trust. We have taken up and paid in full the note secured by the deed of trust to us and I now exhibit it marked paid and cancelled. The amount of this note was \$7,553.34 and interest was due from January 29th, 1897. February 12th, there was a credit for \$470.80  
 555 being interest to date and \$3,710.15 on account of the note.

He has paid one of the notes and instalments of interest that have accrued.

By Mr. WRIGHT:

Q. When was this note secured by deed of trust to Mrs. Gaither, paid? A. The Starkweather note was paid out of the proceeds of sale of February 17, 1899 and I file herewith a statement of such payment. (Statement filed and marked "Exhibit Duvall #3".) That is a general statement of this situation.

By Mr. DONALDSON:

Q. Mr. Duvall, the bill for injunction was filed by George E. Ricker, January 19th, 1898, against you and C. C. Cole, to restrain the sale of the property which was advertised to take place that afternoon?

Mr. DUVALL: We offer to prove that a reasonable compensation for the defence under the equity proceeding No. 18,969 and services of the trustees in getting in the four tax deeds, would be \$250.00 to \$300.00, which we claim out of the fund now in the hands of the trustees.

Cross examination.

By Mr. BAKER:

Q. Did you charge commissions on both sales? A. Yes sir.

Q. Did you charge auctioneers' fees both times? A. Yes sir.

Q. Did you make any attempt to carry out the first sale, was any action brought against the defaulting purchaser? A. No,  
 556 the parties in interest were acquainted with the proceeding that had been taken and we stand ready to take any action that any party in interest desires taken.

Q. You did not take action? A. No sir.

Q. Whom did you make the first sale to? A. George E. Ricker.

Q. The second sale to whom? A. Herbert W. T. Jenner.

Q. That was the one that was consummated? A. Yes sir, that is the one we got the lesser sum for.

Q. Is there any authority in the deed of trust that allows you a commission on a sale of anybody else's property other than Starkweather's? A. I consider that the trustees are entitled to commissions as claimed in this case, that is to say, commissions on the first sale and commissions on the second sale.

Q. Although but one was consummated? A. Yes sir, we stand ready to assign any benefit of the first sale to any person interested therein.

Mr. Baker offers in evidence the deed of trust from George B. Starkweather and wife to Duvall and Cole, and it is filed and marked Exhibit "# 4"

Hearing adjourned to—

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*Confirmation of Auditor's Report.*

Filed March 5, 1900.

In the Supreme Court of the District of Columbia.

ELIZABETH B. HUBBARD	} 19856. Equity.
<i>vs.</i>	
ANDREW B. DUVALL ET AL.	

It is by the court this fifth day of March, A. D. 1900 *ordered* that the report of the auditor filed in the above entitled cause be, and the same is hereby finally ratified and confirmed; and the trustees, Duvall and Cole are hereby directed to distribute the proceeds of sale of the real estate in the proceedings mentioned in accordance with said report of the auditor.

JOB BARNARD, *Justice.*

We hereby consent to the above order.

A. B. DUVALL,  
CHAS. C. COLE,  
W. W. WRIGHT, JR.,  
D. W. BAKER,  
*Solicitors for Complainant.*

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Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }  
*District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 557, inclusive, and contained in two volumes, marked "volume I" and "volume II," to be a true and correct transcript of the record, as per directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 20,205, in equity, wherein George B. Starkweather is complainant and Herbert W. T. Jenner *et al.* are defendants, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe  
Seal Supreme Court my name and affix the seal of said court, at  
of the District of the city of Washington, in said District, this  
Columbia. 13th day of April, A. D. 1905.

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No.  
1538. George B. Starkweather, appellant, *vs.* Herbert W. T. Jenner  
*et al.* Court of Appeals, District of Columbia. Filed Apr. 14, 1905.  
Henry W. Hodges, clerk.

TUESDAY, *October 3rd, A. D. 1905.*

No. 1538.

GEORGE B. STARKWEATHER, Appellant,

vs.

HERBERT W. T. JENNER, JOHN D. CROISSANT, JOHN O. JOHNSON,  
ANDREW B. DUVALL, and CHARLES C. COLE.

The deaths of Andrew B. Duvall and Charles C. Cole, appellees in the above entitled cause, were suggested to the consideration of the Court by Mr. Richard P. Evans, of counsel for the appellant, which was not denied.

TUESDAY, *November 21st, A. D. 1905.*

No. 1538.

GEORGE B. STARKWEATHER, Appellant,

vs.

HERBERT W. T. JENNER, JOHN D. CROISSANT, JOHN O. JOHNSON,  
ANDREW B. DUVALL, and CHARLES C. COLE.

On consideration of a suggestion of the diminution of the record submitted by Mr. R. P. Evans, of counsel for the appellant in the above entitled cause, praying the Court for a writ of certiorari directed to the Justices of the Supreme Court of the District of Columbia, commanding them to send to this Court forthwith a copy of the papers enumerated in the petition this day filed, It is ordered by the Court that said writ issued as prayed.

Court of Appeals of the District of Columbia, January Term, 1906.

No. 1538.

GEORGE B. STARKWEATHER, Appellant,

vs.

HERBERT W. T. JENNER et al.

Comes now the appellant, by his attorneys, and moves this Honorable Court for an order requiring the heirs at law of the deceased defendants in this cause, Charles C. Cole and Andrew B. Duvall to come into Court and be made parties defendant to this suit.

RICHARD P. EVANS,

*Of Counsel for Appellant.*

(Endorsed:) No. 1538. January Term 1906. Court of Appeals. George B. Starkweather, Appellant, vs. Herbert W. T. Jenner, et al. Motion for Order requiring heirs at law of deceased defendants Cole and Duvall to become parties to suit. Court of Appeals, District of Columbia. Filed Jan. 1, 1906. Henry W. Hodges, Clerk.

THURSDAY, January 4th, A. D. 1906.

No. 1538.

GEORGE B. STARKWEATHER, Appellant,

vs.

HERBERT W. T. JENNER, JOHN D. CROISSANT, JOHN O. JOHNSON  
ANDREW B. DUVALL, and CHARLES C. COLE.

The motion for an order requiring the heirs at law of the deceased defendants, Cole and Duvall, to become parties to the suit in the above entitled cause, was submitted to the consideration of the Court by Mr. R. P. Evans, in support of motion.

Court of Appeals, District of Columbia, January Term, 1906.

No. 1538.

GEORGE B. STARKWEATHER, Appellant,

vs.

HERBERT W. T. JENNER et al., Appellees.

Come now the appellees, by their solicitors, and in response to the motion filed by the appellant in this cause on the 4th day of January, 1906, requiring the heirs at law of the deceased appellees, Charles C. Cole and Andrew B. Duvall, to be made parties in this cause, and suggest to the Court that the said deceased parties were trustees under a deed of trust, and that Andrew B. Duvall was the surviving trustee, and that neither his heirs at law, nor the heirs at law of the said Charles C. Cole, are necessary parties, that being the sole reason why said appellees have not voluntarily made them parties to this cause.

Said appellees further say that if the Court is of opinion that the heirs at law of said deceased parties are necessary parties to this cause, they will forthwith have them made parties so as not to postpone the hearing of the cause when it is reached.

B. F. LEIGHTON,

R. GOLDEN DONALDSON,

*Solicitors for Appellees.*

To R. P. Evans, Edwin Forrest, Solicitors for appellant.

SIRS: Please take notice that we have this day filed the above response to your motion in the Court of Appeals of the District of Columbia, and that we will on Tuesday next, the 9th inst., at the opening of the Court, call the matter to the attention of the court for its action thereon.

B. F. LEIGHTON,

R. GOLDEN DONALDSON,

*Sols. for Appellees.*

Service of copy of the above response to motion accepted this 5th day of January, 1906.

*Solicitors for Appellant.*

(Endorsed:) No. 1538. Court of Appeals, District of Columbia, January Term. George B. Starkweather, Appellant, vs. Herbert W. T. Jenner, et al., Appellees. Appellees' Response to Appellant's Motion filed January 4th, 1906. Court of Appeals, District of Columbia. Filed Jan. 8, 1906. Henry W. Hodges, Clerk.

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RETURN TO WRIT OF CERTIORARI.

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COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1906.

No. 1538.

GEORGE B. STARKWEATHER, COMPLAINANT,

*vs.*

HERBERT W. T. JENNER ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 8, 1906.

THE UNITED STATES OF AMERICA, *ss:*

[Seal Court of Appeals, District of Columbia.]

The President of the United States of America, to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas in a certain suit in said Supreme Court between George B. Starkweather, complainant, and Herbert W. T. Jenner, John D. Croissant, John O. Johnson, Andrew B. Duvall and Charles C. Cole, defendants, which suit was removed to the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

I. Deed of conveyance from appellees Duvall and Cole, trustees, to appellee Herbert W. T. Jenner, trustee.

II. Deed of trust from the appellant, Starkweather, to Duvall and Cole, trustees, appellees.

III. Final decree in Equity cause 20,360 and the opinion of the Court filed therein.



IV. Deed of trust from Johnson & Croissant, trustees, appellees, to Warner & Geisey, trustees, to secure Herbert W. T. Jenner, appellee, and others, annulled by above-named decree.

V. Order of the Supreme Court in this cause, appointing a guardian *ad litem* for appellee John D. Croissant, insane.

You, therefore, are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Court of Appeals, so that you have the same, together with this writ, before the said Court of Appeals, forthwith.

Witness the Honorable Seth Shepard, Chief Justice of the said Court of Appeals, the 21st day of November, in the year of our Lord one thousand nine hundred and five.

HENRY W. HODGES,

*Clerk of the Court of Appeals of the District of Columbia.*

[Endorsed:] Court of Appeals of the District of Columbia. No. 1538, October Term, 1905. George B. Starkweather, appellant, vs. Herbert W. T. Jenner, *et al.* Writ of Certiorari. Filed Nov. 22, 1905, J. R. Young, Clerk.

*Decree.*

Filed January 31, 1901. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

In Equity: No. 20360.

GEORGE B. STARKWEATHER

*vs.*

BRAINARD H. WARNER ET AL.

This cause coming on to be heard upon the pleadings, testimony and other papers in the cause and being argued by counsel for the respective parties on due consideration thereof it is this 4th day of January, 1901, by the Court adjudged, ordered and decreed that the deed of trust dated the 28th day of January, 1898 from John D. Croissant and John O. Johnson, trustees, to the defendants Brainard H. Warner and S. Herbert Geisey as trustees, and recorded among the land records of the District of Columbia in Liber 2279 at folio 259, be and the same hereby is set aside as null and void, and as being beyond the authority of the said trustees, Johnson and Croissant, to execute and deliver together with all proceedings thereunder heretofore had, and the execution of said deed of trust is hereby perpetually enjoined and restrained.

It is further ordered that the complaint recover of the defendants, except the defendants Warner and Geisey, trustees, his costs in this behalf expended, with execution therefor as at law.

JOB BARNARD, *Justice.*

*Opinion of Mr. Justice Barnard.*

Filed April 17, 1901. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

In Equity. No. 20360.

STARKWEATHER

*vs.*

WARNER ET AL.

DECEMBER, 31ST, 1900—11 o'clock a. m.

Now, in the case of Starkweather *vs.* Warner, a case that has involved the taking of a good deal of testimony, and the examination of a great many papers and witnesses, and has been the subject of litigation for some time. The conclusion I reach is within a very narrow compass.

There were some parties that formed a syndicate to buy some property out here in Mt. Pleasant back in 1892. The first paper, in the series of papers here, is not dated, but it was apparently back in 1892. The title was supposed to be in the complainant, Starkweather. And they formed a company by which they were going to purchase that ground, and form a syndicate, and issue shares. And they signed a paper to that effect, a number of them did, Johnson, Croissant and Johnson, Parker, Barker, Stanley Johnson, Stuart, Dyer, Sixbury, Ellis Spear, Peale, Baker, Jenner, and perhaps some others. The property was to be valued at \$75,000.00, and to be divided up into thirty syndicate shares. They signed a preliminary paper to that effect and Croissant and Johnson were to be trustees to hold the property. The paper was signed and the property was bought and the title taken absolutely in Johnson and Croissant, in the first place, from Starkweather, and afterwards the deed of trust upon the property at the time the title was so taken was foreclosed, and they took the title from the trustees under that deed of trust to them in trust to sell, manage, &c. But after all that conveyancing was done, the title was put in these trustees for the benefit of this syndicate. The contract was finally consummated by the declaration of trust that these parties executed, in the nature of shares of stock, or something similar to shares of stock, in corporations. They had a stock book, and they issued certain syndicate certificates, as they are called; and these certificates purport to set out the trust on which the trustees are holding this property; and they are not only signed by the trustees, but they are signed by the party taking the syndicate certificate in evidence of his agreement as to the terms of the trust on which the property is held by the syndicate trustees; and I am going to read this blank certificate. \* \* \* They are all alike in this respect, and they are all subsequent to the conveyance to these trustees, and subsequent to this preliminary paper, their subscription list, subscribing to the syndicate; and I must hold that the whole contract, whatever it had been before, or

whatever it was intended to be, is now merged in this declaration of trust.

(Reading.)

*"Syndicate Certificate.*

Know all men by these presents, that we, J. D. Croissant and John O. Johnson, trustees, as joint tenants in fee under certain deeds from George B. Starkweather and Emma his wife, and recorded in the Land Records of the District of Columbia, hold the real estate situated in the District of Columbia and designated as follows, to wit, All of those certain pieces or parcels of land and premises known and distinguished as and being the 400,000 square feet, more or less, known as Crescent Heights, at the junction of Fourteenth street (extended) and Spring Street, Mt. Pleasant, D. C.

Whereas John Jones has contributed \$2,500 of the sum expended for the purchase of said real estate, and is therefore entitled to one-thirtieth aforesaid undivided interest in said real estate,

Now, Therefore, in consideration of the premises and said payment, receipt whereof from said John Jones is hereby acknowledged, we, the said J. D. Croissant and J. O. Johnson do hereby declare that we hold the said real estate upon trust as follows, for said John Jones, his heirs and assigns, to the extent of one-thirtieth aforesaid undivided interest aforesaid; that is to say: In and upon the trusts set forth and declared in said deed."

Now, that reference is misleading, if it is dependent upon that deed to declare the trust, because there is no trust declared in it at all. It is an absolute deed upon its face, and it is the only deed that is referred to in the syndicate certificate.

(Reading.)

"It is further understood and agreed as follows: The trustees shall be entitled to a joint commission of three per cent."—

Now, there was no trust in that way, but they were simply holding it in fee, as far as that deed is concerned. That changed the terms of the original subscription list, which was five per cent.

(Reading.)

"On all receipts except from assessments heretofore or hereafter paid by members of the syndicate, and from loans negotiated by the trustees."

Now, that fixes their compensation.

(Reading.)

"This declaration and the interest hereunder shall, at all times, be subject to assessment for its proportionate part of money necessary to pay the expenses incurred in the execution of the trusts, as provided in the deed to said trustees, hereinbefore recited."

Another misleading recital as far as that deed is concerned, because there was nothing in it.

(Reading.)

"Which said assessments shall be payable in thirty days after written notice thereof shall have been mailed, post paid, to the person assessed, or personally served upon him, and in default of such

payment, the said trustees, or the survivor of them, are hereby authorized to sell the interest of such person so in default, either at public or private sale, after such notice and upon such terms as they or the survivor shall deem best, and to transfer such interest to the purchaser, free from liability on his part, for the application of the purchase money. In the event of any such sale the proceeds shall first be applied to the payment of the assessments in default, with interest at 6 per cent, from date of notice until paid, and the surplus shall be paid over to the owner of such interest, his heirs or assigns.

"This declaration and the interest hereunder may be transferred by writing under seal, and upon such transfer the assigned declaration shall be surrendered to the trustees and a new declaration issued in the name of the purchaser, and the trustees shall not be bound to take notice of the rights of a transferee who fails to surrender such assigned declaration, and to procure a new one in his own name.

"Any transferee of such declaration, and the interest hereunder, shall thereby be subrogated to all the rights and subjected to all the liabilities of the original holder; and the said John Jones, as evidence of the acceptance of this declaration, and to confer all necessary power upon said trustees, and the survivor of them, in the premises, as above set forth, has hereunto set his hand and seal the day and year last herein written," &c.

Now, I think that that paper must be taken as the chart to guide these trustees in the conduct of their business.

This property is owned in shares; there may be thirty parties—different parties owning the property, having the beneficial interest in it. These trustees are holding it for their benefit, and on the trusts that they have stated in these certificates; and I think they must be limited and guided by those trusts.

Now, in this case, the syndicate went along for a while, and moneys were to be had sufficient to pay certain costs, and then other expenses were necessarily added on the incumbrance and taxes on the property, and perhaps other expenses were necessary, and these trustees raised the money as best they could to meet these. And after they had raised the money they conceived the idea of executing a deed of trust on the whole property. Not the whole property, that was to be covered by these syndicate certificates, but on that portion of the tract that was laid out in lots. So they made a deed of trust to Warner and Giesy as trustees and secured some of the members of the syndicate, and some other parties, perhaps; but they are all members of the syndicate. At any rate, to secure monies which the trustees saw were necessary to be raised for the purpose of paying the expenses that were properly chargeable to all the members of the syndicate, to be applied to the payment of the taxes on the property, and pay the interest, and by executing that deed of trust they placed the property, of course, in the power of those trustees and the parties acknowledging the different interests secured, to foreclose and take the title entirely away from these syndicate holders, if they had power to do so. And under that deed of trust, the notes not having been paid at maturity, the property was sold and the sale passed upon and confirmed. An injunction, I think,

was asked, and perhaps not granted; but at any rate the sale was confirmed, and the case finally came on for hearing at this term of Court, on its merits. Proof has been taken, and now the question is, what shall be done with that deed of trust, and what shall be done with that sale?

The bill does not expressly ask to have that deed of trust cancelled, but does ask that the trustees should be perpetually enjoined from executing it, on the ground that the trustees, John D. Croissant and John O. Johnson, were without power to execute such a deed of trust.

And I think that contention of the complainant, who is one of the certificate holders, having an interest in some of the certificates of the syndicate—I think that contention is sustained by the proof in the case; mainly by the certificate itself; that they must be bound by that. They have undertaken to raise the money, or to secure money already raised, by a deed of trust on the property, instead of by levying an assessment and sale of the shares under this certificate as they were authorized to do by the certificate itself, and the powers laid down there. And I think the result of this is that the deed of trust will have to be set aside, in effect, and its execution perpetually enjoined, and leave the trustees free to make assessment, or to take such other proceedings as they may be advised, to enforce payments of the debts incurred for the benefit of all the syndicate certificate holders. The bill is broad enough to cover that relief, and it seems to me that this relief should follow the conclusion that I have reached as to the powers. They held this property in trust for the benefit of all of them, and any one naturally would have authority to bring them into Court and to confine them to the powers that are set forth in this certificate, and require them to go on and execute these powers, and not go outside of it. It may be that outside of that deed, some proceedings in equity might be instituted for the benefit of all in the syndicate but that would have to be done by some different proceeding. They cannot sit down and execute a deed of trust, and put it in the hands of strangers, giving them power to sell in case of default in the payment. These notes that they have executed, they did not propose to pay them themselves. They executed them, perhaps, as trustees, and they seem to have been very negligent in paying them. There may be no dereliction on their part in not paying them. There was no money in their hands to pay them with. They could not make sales to pay them. And it seems to me that the only way—the only proper way—is, if reasonable assessments were made and not paid for them to sell the shares as provided; and that is the safest way for the parties to act where they are bound by a deed of trust like this.

A decree may be drafted in accordance with these suggestions in behalf of the complainant.

MR. GIESY: Your Honor, of course the trustees in the deed of trust have been put to some expense in defending this suit here. They have proceeded by consent of Court. And there was an injunction prayed before Judge Cox, and of course Your Honor is familiar that that injunction was dismissed and the sale directed to proceed, with a certain change in the advertisement. Acting under that direction

of the Court, the trustees have proceeded and of course incurred advertisement expenses, and necessary expenses in defending this suit. What is your Honor's ruling in regard to costs?

The Court: Well, I won't dispose of that, I think, now. They are going on on their own in the matter. They advertised the property for sale. The Court did not stop them.

Mr. GIBBY: The Court directed them to do certain things—change the advertisement, and proceed to the sale.

Mr. FORREST: That was a preliminary matter.

The Court: I don't think I will be able to dispose of that this morning. I think you had better prepare the decree and consult about that afterwards.

Mr. GIBBY: You said that the trustees may proceed in such way as they may deem best to procure the payment of these notes. Which trustees do you refer to?

The Court: I refer to Croissant and Johnson, of course. You can put in, where I referred to those trustees, the words, Croissant and Johnson. These are debts, if they are debts at all, of the syndicate. Of course, these trustees propose to pay them. They had not any money to pay them with, and they have to get the money from the members of the syndicate.

Mr. FORREST: There was one thing further that I think Mr. Starkweather also asked for an accounting.

The Court: Well, I did not consider that question as to an accounting. It may be that if you were here properly for an accounting that an accounting could be had. There is some account pending, as I understand. You had better look into that and see about it.

JOB BARNARD,  
Justice.

April 18, 1904.

*Order Appointing Guardian.*

Filed March 28, 1904. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

Equity. No. 20205.

GEORGE B. STARKWEATHER

vs.

H. W. T. JENNER ET AL.

Upon consideration of the suggestion of the complainant as to the lunacy of the defendant John D. Croissant, and his motion that a guardian *ad litem* be appointed for him in this cause, it is this 28th day of March, 1904, ordered that De Witt C. Croissant be, and

he is hereby, appointed guardian *ad litem* to appear for the said John D. Croissant.

THOS. H. ANDERSON,

*Justice.*

We consent—

R. P. EVANS,  
EDWIN FORREST,  
B. F. LEIGHTON,

*Sol. for Complainant and for Friend,*

COLE & DONALDSON,

*For John D. Croissant et al.*

TWO

Filed January 5, 1906. J. R. Young, Clerk.

Recorded January 29, 1889, 12-03 P. M. Trust.

George B. Starkweather *et al.*,  
to  
Duvall and Cole,

Liber E365, Folio 248 *et seq.*

This Indenture, Made this Twenty-ninth day of January in the year of our Lord one thousand eight hundred and eighty-nine, between George B. Starkweather and Emma L. Starkweather, his wife of the District of Columbia parties of the first part, and Andrew B. Duvall and Charles C. Cole of the same place, parties of the second part: Whereas the said George B. Starkweather is justly indebted unto Andrew C. Bradley, Trustee in the full sum of Seven Thousand Five Hundred and Fifty-three 31/100 Dollars (\$7553.31) for which amount he has passed unto the said Andrew C. Bradley, Trustee, his promissory note bearing even date with these presents, payable four years after date with interest at six (6) per centum per annum payable semi-annually, with the privilege of payment at any time before maturity, provided that all interest upon said note to its maturity or to six months beyond such payment be paid. And Whereas, the parties of the first part desire to secure the prompt payment of said debt and the interest thereon, when and as the same shall become due and payable, together with all costs and expense that may accrue thereon. Now therefore this indenture witnesseth, that the parties of the first part in consideration of the premises and of one dollar lawful money to them in hand paid by the parties of the second part, the receipt of which before the sealing and delivery of these is hereby acknowledged, have given, granted, bargained and sold, aliened, enfeoffed, released and conveyed, and do by these presents give, grant, bargain and sell, alien, enfeoff, release and convey unto the parties of the second part their heirs and assigns the following described land and premises, situate in the District of Columbia, and designated as part of Paleworth and of Pleasant Plains tracts, beginning for the same at a large Stone to the North of Piney Branch Bridge on the Fourteenth

Street Road which stone is also the beginning of the first line of Argyle &c., thence North sixty-one and one-half (61 1/2) degrees East One hundred and ninety-eight (198) feet along the line of the York Estate; thence North fifty-four (54) degrees East three hundred and fifty-nine (359) feet along said line to the North East corner of the herein described tract, thence South fifty-two and one-half (52 1/2) degrees East two hundred and ninety (290) feet to a stone; thence South thirty-three and one-half (33 1/2) degrees East three hundred (300) feet (300 39 100) to an Oak tree, thence South eighteen and three-fourths (18 3/4) degrees East one hundred and seventy-four (174) feet (174 90 100) to what was the North West corner stone of William Holmead's Boundary; thence North Sixty-six and one-fourth (66 1/4) degrees West thirty-six (36) feet (36 50 100); thence North eighty-nine (89) degrees West two hundred and sixty-five (255) feet; thence South eighty-four (84) degrees West two hundred and twenty-seven (227) feet (227 75 100); thence South eighty and one-fourth (80 1/4) degrees West one hundred and eighty-one (81) feet (81 50 100) to a stone, thence North nineteen (19) degrees West two hundred and sixty-three (263) feet along the Capt. Hall line to a stone; thence South sixty-three (63) degrees West with the Hall line along a wagon road one hundred and thirteen (113) feet, thence South fifteen (15) degrees West fifty-six (56) feet to the East side of the Fourteenth Street Road thence North twenty-eight (28) degrees West with said road two hundred and five (205) feet to a point beyond Piney Branch Bridge thence North seventy-six and one-half (76 1/2) degrees East seventy-nine (79) feet (79 20 100) to the beginning, containing about seven acres and being the same land conveyed unto the said George B. Starkweather by deeds recorded among the Land Records of the District of Columbia in Liber No. 1172 folio 398 and in Liber No. 1193 folio 272. Also that piece or parcel of land adjoining the same known as lot numbered One (1) of the Holmead tract bordering on the North and West line of Spring Street and lying adjacent to the South and East lines of the Lewis land and South of the land of W. J. Rhess which was transferred from William Holmead to Virginia C. Lewis and recorded the deed thereof July 14, 1886. Together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise howsoever, of the parties of the first part, of, in to, or out of the said land and premises. To have and to hold the said land and premises and appurtenances, unto and to the only use of the parties of the second part, their heirs and assigns. In and upon the trusts, nevertheless hereinafter declared, that is: In trust to permit said George B. Starkweather his heirs or assigns to use and occupy the said described land and premises, and the rents, issues, and profits thereof, to take, have and apply to and for his and their sole use and benefit, until default be made in the payment of the debt hereby secured or any installment of principal or interest thereon, when and as the same shall become due and payable or any proper cost, charge commission or expense, in and about the same. And up-



on full payment of all of said debt, and the interest thereon, and all other proper costs, charges, commissions and expenses at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said George B. Starkweather his heirs or assigns, at his or their cost. And upon this further trust, upon any default or failure being made in the payment of the said debt or of any installment of principal or interest thereon, when and as the same shall become due and payable, or any proper cost, charge commission, or expense in and about the same, then and at any time thereafter to sell the said described land and premises at public auction, upon such terms and conditions at such time and place, and after such previous public advertisement as the parties of the second part or the survivor of them, or his heirs or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee simple to, and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase money; and of the proceeds of said sale or sales: Firstly, to pay all proper costs, charges, and expenses including all taxes, general and special, due upon said land and premises at time of sale, and to retain as compensation a commission of five per centum on the amount of the said sale or sales. Secondly, to pay whatever may then remain unpaid of the said debt and the interest thereon, whether the same shall be due or not, and lastly to pay the remainder of said proceeds, if any there be, to said George B. Starkweather his heirs, executors administrators or assigns. And the said George B. Starkweather doth hereby agree at his own cost, during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled to pay all taxes and assessments, both general and special, that may become due on or be assigned against said land and premises during the continuance of this trust, and that upon any default or neglect to pay taxes and assessments, any party secured hereby may pay said taxes and assessments, and the expense thereof, shall be a charge hereby secured and bear interest at the rate of ten per centum per annum until paid.

In testimony whereof the parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

GEORGE B. STARKWEATHER.     { SEAL }  
EMMA L. STARKWEATHER.     { SEAL }

Signed, sealed and delivered in the presence of—  
CHARLES WALTER.

DISTRICT OF COLUMBIA, *to wit*:

I, Charles Walter, a Notary Public in and for the said District of Columbia do hereby certify that George B. Starkweather and Emma L. Starkweather his wife, parties to a certain Deed bearing date on the Twenty-ninth day of January A. D. 1889 and hereto annexed personally appeared before me in said District the said George B. Starkweather and Emma L. Starkweather his wife, being personally

well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Emma L. Starkweather being by me examined privily and apart from her husband and having the Deed aforesaid fully explained to her acknowledged the same to be her act and deed, and declared that she willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this twenty-ninth day of January A. D. 1889.

CHARLES WALTER,

[NOTARIAL SEAL.]

*Notary Public.*

OFFICE OF RECORDER OF DEEDS.

DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an Instrument as recorded in Liber 1365 folio 248 et seq. one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 4th day of January A. D. 1906.

R. W. DUTTON,

*Deputy Recorder of Deeds Dist. of Col.*

[SEAL.]

Recorded February 12th, 1898, 12.09 P. M. Deed.

Duvall and Cole Trs.

to

Herbert W. T. Jenner.

Liber 2294, Folio 167 et seq.

This Indenture, Made this Third day of February in the year of our Lord one thousand eight hundred and ninety-eight by and between Andrew B. Duvall and Charles C. Cole, Trustees, parties of the first part, and Herbert W. T. Jenner, Trustee, party of the second part. Whereas, George B. Starkweather and wife heretofore made and executed a certain Deed of Trust bearing date on the 29th day of January, A. D. 1889 and thereby conveyed the hereinafter described land and premises and appurtenances unto said Andrew B. Duvall and Charles C. Cole in trust to secure the payment of a certain debt therein fully set forth and upon default in the payment thereof to sell the said land and premises and appurtenances at public auction, and out of the proceeds to pay the said debt, and to convey the said land and premises and appurtenances unto the purchaser thereof all of which will more fully and at large appear upon reference to said Deed of Trust duly recorded in Liber Numbered 1365, folio 248 of the Land Records of the District of Columbia. And Whereas default having been made in the payment of said debt, the parties of the first part trustees as aforesaid, in execu-

tion of the trusts declared in said Deed and by direction of the party hereby secured after due public advertisement proceeded to make sale of said land and premises and appurtenances, and in front of said premises on the 3rd day of February, A. D. 1898, at 1 o'clock P. M., being the time and place advertised did sell the same at public auction unto Herbert W. T. Jenner Trustee who as the highest and best bidder therefor at and for the sum of Seventeen thousand one hundred (17,100.00) Dollars, and whereas the said party of the second part hath fully complied with the terms of sale and is entitled to this conveyance: Now therefore this indenture witnesseth, that the parties of the first part as trustee as aforesaid in consideration of the premises and of the purchase money aforesaid to them in hand paid by the party of the second part, in lawful money, receipt of which before the sealing and delivery of these presents is hereby acknowledged have granted, bargained and sold, aliened, enfeoffed, conveyed and confirmed, and by these presents do grant, bargain, and sell, alien, enfeoff, convey and confirm unto the party of the second part his heirs and assigns forever, the following described land and premises situate, lying and being in the District of Columbia, and distinguished as and being all that certain piece or parcel of land known and designated as part of "Padsworth" and "Pleasant Plains" tracts beginning for the same at a large stone to the north of Piney Branch Bridge on the 14th Street road which stone is also the beginning of the first line of "Argyle" etc., thence north sixty-one and a half ( $61\frac{1}{2}$ ) degrees East one hundred and ninety-eight (198) feet along the line of the York estate; thence North fifty-four degrees (54) east three hundred and fifty-nine (359) feet along said line to the Northeast corner of the herein described tract, thence South fifty-two and one-half ( $52\frac{1}{2}$ ) degrees east two hundred and ninety and forty hundredths (290.40) feet to a stone thence South thirty-three and one-half ( $33\frac{1}{2}$ ) degrees east three hundred and thirty hundredths (300.30) feet to an oak tree, thence South eighteen and three-fourths ( $18\frac{3}{4}$ ) degrees East one hundred and Seventy-four and ninety hundredths (174.90) feet to what was the northwest corner stone of William Holmead's boundary, thence North sixty-six and one-fourth ( $66\frac{1}{4}$ ) degrees west thirty-six and fifty hundredths (36.50) feet thence north eighty-nine (89) degrees West two hundred and fifty-five feet (255) thence south eighty-four (84) degrees West two hundred and twenty-seven and seventy-five hundredths (227.75) feet thence south eighty and one-fourth ( $80\frac{1}{4}$ ) degrees west one hundred and eighty-one and fifty hundredths (181.50) feet to a stone; thence North nineteen (19) degrees west two hundred and sixty-three (263) feet along the Capt. Hall line to a stone, thence south sixty-three (63) degrees West with the Hall line along a wagon road one hundred and thirteen (113) feet thence south fifteen (15) degrees West fifty-six (56) feet to the east side of the 14th Street road, thence north twenty-eight degrees (28) West with said road two hundred and five (205) feet to a point beyond Piney Branch bridge, thence north seventy-six and one-half ( $76\frac{1}{2}$ ) degrees east seventy-nine and twenty hundredths (79.20) feet to the beginning, containing about seven (7) acres being the same land conveyed to George B. Starkweather

in Liber 1172, folio 398, and 1193, folio 272 and also all that piece or parcel of land adjoining the same known as lot numbered one (1) of the Holmead tract bordering on the north and west line of Spring Street and lying adjacent to the South and east lines of the Lewis land and south of the land of W. J. Rhces which was transferred from Wm. Holmead to Virginia C. Lewis and recorded by deed thereof July 14th, 1886, together with all and singular the ways, easements, rights, privileges and appurtenances to the same belonging or in any wise appertaining, and all the right, title, interest and estate, legal, equitable and otherwise of the parties of the first part trustees as aforesaid, in and to the same. To have and to hold the said land and premises and appurtenances unto and to the sole use of the party of the second part his heirs and assigns, forever.

In testimony whereof the parties of the first part as trustees as aforesaid have herewith set their hands and seals on the day and year first above written.

ANDREW B. DUVALL, *Trustee*, [SEAL.]

CHARLES C. COLE, *Trustee*, [SEAL.]

Signed, sealed and delivered in the presence of

A. LEFTWICH SINCLAIR.

DISTRICT OF COLUMBIA, *Set:*

I, A. Leftwich Sinclair a Notary Public in and for the said District do hereby certify that Andrew B. Duvall and Charles C. Cole, Trustees parties to a certain Deed bearing date on the Third Day of February, A. D. 1898, and hereto annexed, personally appeared before me in said District the said Andrew B. Duvall and Charles C. Cole being personally well known to me to be the persons who executed the said Deed and acknowledged the same to be their act and deed.

Given under my hand and official seal this Twelfth day of February A. D. 1898.

A. LEFTWICH SINCLAIR,

*Notary Public D. C.*

[NOTARIAL SEAL.]

OFFICE OF RECORDER OF DEEDS

DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an Instrument as recorded in Liber 2294, folio 137 *et seq.* one of the Land Records of the District of Columbia.

In Testimony Whereof I have herewith set my hand and affixed the seal of this office this 4th day of January A. D. 1903.

R. W. DUTTON,

[SEAL.]

*Deputy Recorder of Deeds, Dist. of Col.*

Recorded February 3, 1898, 10:19 A. M. Trust.

Johnson & Croissant, Trs.,  
to  
Giesy & Warner, Trs.

Liber 2279, Folio 259 *et seq.*

This Indenture, Made this twenty-eighth day of January in the year of our Lord one thousand eight hundred and ninety-eight, by and between John O. Johnson and John D. Croissant, Trustees of Washington, in the District of Columbia parties of the first part and S. Herbert Giesy and Brainard H. Warner, of Washington, in the District of Columbia parties of the second part. Whereas John O. Johnson and John D. Croissant Trustees are justly indebted unto Ellis Spear in the full sum of Twenty-three Hundred and Seventy-eight and 79/100 dollars for which they have given their one certain promissory note of even date herewith payable one year after date with interest at the rate of six per centum per annum payable semi-annually and unto Herbert W. T. Jenner in the full sum of Five Hundred and Thirty-five and 35/100 dollars for which they have given their one certain promissory note of even date herewith, payable one year after date with interest at the rate of six per centum per annum payable semi-annually and unto Henry J. Gross in the full sum of Five Hundred and Fifty-four and 12/100 dollars for which they have given their one certain promissory note of even date herewith, payable one year after date with interest at the rate of six per centum per annum payable semi-annually and unto Herbert W. T. Jenner in the full sum of One Hundred and Eighty dollars for which they have given their one certain promissory note of even date herewith payable one year after date with interest at the rate of six per centum per annum, payable semi-annually. And Whereas the parties of the first part desire to secure the prompt payment of said debt, and the interest thereon, when and as the same shall become due and payable, together with all costs and expenses that may accrue thereon; *together with all costs and expenses that may accrue thereon.* Now therefore this indenture witnesseth, that the parties of the first part in consideration of the premises and of one dollar lawful money of the United States of America, to them in hand paid by the parties of the second part, the receipt of which before the sealing and delivery of these presents, is hereby acknowledged, have given, granted, bargained and sold, aliened, enfeoffed, released and conveyed, and do by these presents give, grant, bargain and sell, alien, enfeoff, release and convey unto the parties of the second part, their heirs and assigns, the following described land and premises, situate in the District of Columbia, and designated as part of tracts of land called "Pudsworth" and "Pleasant Plains" known as parts of lots 6B, 7B, and 8B, in Subdivision of "Pudsworth" as per plat recorded in the office of the Surveyor of the District of Columbia in Book Levy Court page 24; and parts of lots one (1) and Three (3) in the division of the estate of William Holmsted

as per plat filed with proceedings in Partitions No. 166 and described by metes and bounds as follows viz: beginning at a point at the northwest corner of said lot One (1) in "Pleasant Plains" thence South 66 1/4 East on North line of Spring Street, thence with North line of Spring Street as laid down on plat recorded in Surveyor's office of the District of Columbia in County Book 6, page 113 to the East line of land conveyed to Hall by deed recorded among the Land Records in Liber 618 folio 368, thence with said Hall's East line North 19° West 155 feet, thence North 80 1/4 East 181.59 feet, thence North 84° East 227.75 feet, thence South 89° East 255 feet thence South 66 1/4 East 36.50 feet to the place of beginning excepting therefrom Lots 5 and the East Half of Lot 10 of C. J. Lewis' Subdivision as the same is recorded in the office of the Surveyor of the District of Columbia in County Book 6 page 113 and the land conveyed to John M. Robinson by deed recorded in Liber 1345 folio 70 and land conveyed to Alice A. White by deed recorded in Liber 1595 folio 11 and land conveyed to John H. Lewis by deed recorded in Liber 1618 folio 178, and land conveyed to Jane A. Murray by deed recorded in Liber 1695 folio 160 as the same are found among the records of the office of the Recorder of Deeds for the District of Columbia, together with all and singular the improvements, ways, easements, rights privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity or otherwise however, of the parties of the first part, of, in, to, or on the said land and premises. To Have and to Hold, the said land, premises and appurtenances, unto and to the only use of the parties of the second part, their heirs and assigns. In and Upon the Trusts Nevertheless hereinafter declared; that is in trust to permit said John O. Johnson and John D. Croissant Trustees their heirs or assigns or the survivor of them, his heirs or assigns to use and occupy the said described land and premises, and the rents, issues and profits thereof to take have and apply to and for their sole use and benefit until default be made in the payment of the several promissory notes hereby secured or any instalment of interest thereon, when and as the same shall become due and payable, or any proper cost charge commission or expense in and about the same. And upon the full payment of all the said notes and the interest thereon, and all other proper costs, charges commissions, half-commissions and expenses at any time before the sale hereinafter provided for to release and convey the said described premises unto the said John O. Johnson, and John D. Croissant Trustees their heirs and assigns the survivor of them, his heirs or assigns at their cost. And upon this Further Trust upon any default or failure being made in the payment of any one of said notes or of any instalment of principal or interest thereon, when and as the same shall become due and payable, or any proper cost, charge commission or expense in and about the same, then and at any time thereafter to sell the said described land and premises at public auction, upon such terms and conditions, at such time and place, and after such previous public advertisement as the parties of the second part the survivor of them, or his or their heirs, or the trustees acting in the execution of this trust shall deem ad-

vantageous and proper; and to convey the same in fee simple to and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase money; and of the proceeds of said sale or sales, First to pay all proper costs, charges, and expenses including all taxes general and special due upon said land and premises at time of sale, and to retain as compensation a commission \$100.00 (one hundred Dollars) Second to pay whatever may then remain unpaid of the said notes and the interest thereon, whether the same shall be due or not; and Last to pay the remainder of said proceeds if any there be, to said John O. Johnson and John D. Croissant Trustees their heirs or assigns. And also to pay all taxes and assessments, both general and special, that may become due on or be assessed against said land and premises during the continuance of this Trust, and that upon any default or neglect to so insure, or pay taxes and assessments, any party secured hereby, may have said improvements insured and pay said taxes and assessments and the expense thereof shall be a charge hereby secured and bear interest at the same rate as the said indebtedness hereby secured. And it is further agreed that if the property shall be advertised for sale under the provisions of this Deed and not sold then the said Trustees shall be entitled to one-half the commission above provided to be computed on the amount of the debt hereby secured.

In witness whereof the parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

JOHN D. CROISSANT, *Trustee*, [SEAL.]  
JOHN O. JOHNSON, *Trustee*, [SEAL.]

Signed, sealed and delivered in the presence of—  
THOMAS J. STALEY.

All interlineations and erasures before signing,  
T. J. S.

DISTRICT OF COLUMBIA, *To wit:*

I, Thomas J. Staley a Notary Public in and for the said District aforesaid do hereby certify that John O. Johnson and John D. Croissant Trustees who are personally well known to me as the grantors in and the persons who executed the foregoing and annexed deed bearing date on the twenty-eighth day of January A. D. 1898 personally appeared before me in said District and acknowledged the said Deed to be their act and deed.

Given under my hand and official seal, this twenty-first day of January A. D. 1898.

THOMAS J. STALEY,  
*Notary Public.*

[NOTARIAL SEAL.]

OFFICE OF RECORDER OF DEEDS,  
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an Instrument as recorded in Liber 2279, folio 259 *et seq.* one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 4th day of January A. D. 1906.

R. W. DUTTON,

[SEAL.]

*Deputy Recorder of Deeds, Dist. of Col.*

In the Supreme Court of the District of Columbia,

Equity. 20205.

GEORGE B. STARKWEATHER, Compl't,

*vs.*

HERBERT W. T. JENNER ET AL., Def'ts.

The Clerk of Court will please file the accompanying certified copies of deeds from the office of the Recorder of Deeds of this District, and make use of the same in his return to the writ of Certiorari from the Court of Appeals in case No. 1538, between these parties, in lieu of the original exhibits in said Equity cause called for by said certiorari but missing from the files and record of said cause.

Rems.—(1) Deed of Trust from George B. Starkweather *et al.* to Duvall & Cole, Trustees.

(2) Deed from Duvall & Cole, Trustees to Herbert W. T. Jenner, Tr.

(3) Deed of Trust from Johnson & Croissant, Tr. to Giesy & Warner, Tr.

RICHARD P. EVANS,

*Attorney for Compl't. and Appellant.*

January 4, 1906.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, do hereby certify in obedience to the Writ of Certiorari hereto attached and returned herewith, that the foregoing are true and correct copies of

"Final decree in Equity Cause No. 20,360 and the opinion of the Court filed therein."

"Order of the Supreme Court in this cause appointing a guardian *ad litem* for appellee John D. Croissant, insane," and containing the matter omitted from the record heretofore transmitted to the Court of Appeals of the District of Columbia.

I Further Certify that I have made careful search for the Deeds called for in paragraphs I, II & IV of said Writ of Certiorari, and do not find them in the files of said cause, nor do I find any record to show that they have heretofore been filed therein.

Also true copies of the deeds called for in paragraphs I, II & IV of said Writ of Certiorari, but which were filed in the cause subsequent to the receipt of such Writ and made part of this return by



request of Solicitor for appellant, a copy of said request being also included in this return.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the said Supreme Court, the 8th day of January, A. D. 1906.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk*.

[Endorsed:] No. 1538. George B. Starkweather, complainant *vs.* Herbert W. T. Jenner, *et al.* Return to Writ of Certiorari. Court of Appeals, District of Columbia. Filed Jan. 8, 1906. Henry W. Hodges, Clerk.

TUESDAY, *January 9th, A. D. 1906.*

No. 1538.

GEORGE B. STARKWEATHER, Appellant.

vs.

HERBERT W. T. JENNER, JOHN D. CROISSANT, JOHN O. JOHNSON,  
ANDREW B. DUVALL, and CHARLES C. COLE.

On consideration of the motion for an order requiring the heirs at law of the deceased defendants, Cole and Duvall, to become parties to the suit in the above entitled cause, It is by the Court this day ordered that said motion be and the same is hereby, overruled.

TUESDAY, *January 16th, A. D. 1906.*

No. 1538.

GEORGE B. STARKWEATHER, Appellant.

vs.

HERBERT W. T. JENNER, JOHN D. CROISSANT, JOHN O. JOHNSON,  
ANDREW B. DUVALL, and CHARLES C. COLE.

On motion, the appellant is allowed to file supplemental brief herein, if so advised.

The argument in the above entitled cause was commenced by Mr. R. P. Evans, attorney for the appellant, and was continued by Mr. B. F. Leighton, attorney for the appellees.

WEDNESDAY, *January 17th, A. D. 1906.*

No. 1538.

GEORGE B. STARKWEATHER, Appellant.

vs.

HERBERT W. T. JENNER, JOHN D. CROISSANT, JOHN O. JOHNSON,  
ANDREW B. DUVALL, and CHARLES C. COLE.

The argument in the above entitled cause was continued by Messrs. B. F. Leighton and R. G. Donaldson, attorneys for the appellees, and was concluded by Mr. A. W. Thomas, attorney for the appellant.

No. 1538.

GEORGE B. STARKWEATHER, Appellant.

vs.

HERBERT W. T. JENNER, JOHN D. CROISSANT, JOHN O. JOHNSON,  
ANDREW B. DUVALL, and CHARLES C. COLE.

*Opinion.*

Mr. Justice McCOMAS delivered the opinion of the Court:

This is an appeal from a decree in equity dismissing the bill filed by Starkweather, the appellant, praying the Supreme Court of this

District to set aside a sale of land made by Cole and Duvall, trustees, under deed of trust, to Jenner the appellee, or, in the alternative, to decree that Jenner hold title to the property he purchased for the benefit of the appellant and other persons, members of the syndicate which before such sale owned the land. The land sold contained seven acres and was a part of ten acres owned by such syndicate, the land lying in Washington, between Fourteenth and Sixteenth streets extended, and known as the "Crescent Heights" syndicate purchase. Under the syndicate agreement this land was vested in Croissant and Johnson, trustees, appellees herein.

The amended bill was filed April 1, 1903, the original bill probably a short time prior to that date. The record omits all reference to the original bill.

It appears that the appellant was the owner of the two parcels of land comprising ten acres, and that early in 1892 he conveyed both parcels to the appellees Croissant and Johnson as trustees for the shareholders in the syndicate who had united to purchase the property for \$75,000. There were to be thirty shares each of the value of \$2,500. The encumbrances upon the property were several deeds of trust aggregating \$39,000, and among these encumbrances was a deed of trust to Gaither to secure \$7,553.34, executed January 29, 1889, wherein Cole and Duvall were trustees, payable four years after date with interest. This lien was upon the seven-acre parcel.

The appellant conveyed the said two parcels to Croissant and Johnson, trustees, on May 2, 1892. Finally Gaither directed Cole and Duvall, trustees, to sell the seven acre property covered by his deed of trust. The trustees advertised the property for sale in November, 1897, and on the day of sale the property was knocked down to Ricker, who paid the \$1,000 deposit money, but did not further comply with the terms of sale.

Ricker purchased for the appellant. Cole and Duvall, trustees, upon payment of \$300 each time by appellant, twice postponed the time of consummating the sale. Neither Ricker nor Starkweather, the real purchaser, who was also a large shareholder in this syndicate, complied with the terms of sale. The trustees readvertised the property. Thereupon Ricker filed a bill in equity in the court below to restrain such sale. This bill was finally dismissed on February 3, 1898, and after due publication, Cole and Duvall, trustees, again offered the property for sale. On the day of sale, Starkweather by his agent, Silver, and Jenner, the appellee, a shareholder in the syndicate, and others were bidders. The property was knocked down to Silver, and Starkweather met the requirement for a deposit of a thousand dollars by offering certificates of stock in the Forest Lake Cemetery Company; this security the trustees, Cole and Duvall, declined to accept, and immediately reoffered the property, and at this sale a few minutes afterward, Jenner, the appellee, became the purchaser of the seven-acre parcel for \$17,100. Jenner, having complied with the terms of sale, the property was conveyed to him by Cole and Duvall, trustees, on February 2, 1898. The auditor's report distributing the money was confirmed and the trustees disbursed the money accordingly.

The appellant in his amended bill charged that Croissant and Johnson, trustees, and Jenner, a shareholder in the syndicate, who had associated several other syndicate members with him, conspired, first, by declining to pay the interest due to Gaither to hasten the public sale of the property; and, secondly, by Jenner and his three associates combining and agreeing not to bid against each other for the property, and for their own benefit to bid in the property for as small a sum as possible, and not exceeding \$21,000. It appears that all of the thirty syndicate shares except six were sold. The appellant received eleven shares in addition to \$11,000 in cash and the payment of certain judgments against him by the trustees, and he still holds four of these shares. Six of these shares remained in the possession of Croissant and Johnson, trustees, to be sold for the payment of the encumbrances and expenses, and it is charged that said trustees, in collusion with the appeller and to secure him an unlawful advantage in the purchase of said property, invited and assisted the sale under the Gaither deed of trust, although it was their duty and within their power as trustees to pay the interest thereon, and to assess the shareholders pro rata to meet such interest and other expenses of holding the syndicate property. In lieu thereof the appellee and others paid the interest due on said deed of trust up to the year 1898, when these persons refusing longer to pay the interest, upon default the property was advertised and sold.

The appellee admits the power of Croissant and Johnson to assess the shareholders, but alleges that the shares became unmarketable and the persons who had advanced the interest became unwilling to advance more because of a suit in equity brought by the appellant, and by reason of mis-statements of the appellant whereby the shares became unmarketable and the trustees of the syndicate could not negotiate any of them to pay either encumbrances or interest thereon.

The appellee avers that he purchased the property for himself and certain other shareholders who were willing to join him and contribute the purchase money, and that he and they so acted in order to save, if possible, the money he had already advanced and he did not refuse an interest in the purchase to any shareholders willing and able to pay for the same. The appellee denies all collusion and fraud. Cole and Duvall, trustees, assert that the sale was fair and that they had no knowledge of any combination on the part of the appellee and others to improperly acquire the property and do not believe such combination existed. Croissant and Johnson, trustees, say they were unable to pay the Gaither deed of trust at maturity and unable to sell any of the six shares remaining in their hands, and that the deed of trust gave them no power and imposed no duty on them to pay off lien debts by making an assessment upon shareholders, and that they could not make any assessment whatever upon shareholders unless requested to do so by at least a majority of such shareholders, and finally, that it was impossible to raise any money whatever on assets of the syndicate in order to pay off the Gaither lien and thereby prevent the sale. Croissant and Johnson, trustees, say that for some time they met the payment of interest by making loans personally or by obtaining loans as trustees from a bank. They deny all col-

lusion with the appellee or anybody in relation to the purchase of the seven-acre tract by the appellee.

There are twelve assignments of error, some of which we need not consider because the matters therein are included in the others which we deem material.

1st. Under the fourth assignment of error the appellant contends that the relationship of the shareholders in the "Crescent Heights" syndicate land, whether they be partners or tenants in common or *certainis que trustent*, or hold other joint relationship, was actually such as created among them a fiduciary relationship, a community of interest, which made it unlawful and inequitable for the appellee and the three shareholders associated with him to combine to bid in the syndicate property for as small a sum as possible at the auction sale under the Gaither deed of trust for their personal benefit, and that they thereby sought to and did extinguish the rights and interests of the complainant and all other of the shareholders in the seven acres sold by Cole and Duvall, trustees.

The appellant mainly relies upon the following writing, signed by Jenner, the appellee, and Campbell, Spear, and Parker, three other shareholders:

WASHINGTON, D. C., Dec. 14, 1897.

We, the undersigned, hereby appoint Herbert W. T. Jenner, trustee, of Washington, D. C., our attorney-in-fact, to bid for us at an auction resale of about seven acres of land near Washington, D. C., to take place on December 16, 1897, under a deed of trust or any other postponement of said resale, or subsequent resale, to bid in the property for as small a sum as possible, the outside limit to be twenty-four thousand dollars (\$24,000).

And we hereby agree to pay Mr. Jenner our proportionate shares of the total cost and tax deeds on said property already obtained by him, and we agree to pay our proportionate shares of the deposit money on the day of sale, and the balance of the purchase money within the period and on the terms set forth in the advertisement under which the sale is made, our said proportionate interests or shares to be as stated below under our respective signatures.

The appellant insists that by this secret agreement, and other means, the appellee gained an unlawful and inequitable advantage over him in the purchase of the land, and that such purchase should be set aside, or, in the alternative, should be held a constructive trust insuring to the benefit of the appellant and to the other shareholders in the "Crescent Heights" syndicate land. It should be observed that the appellant, at each time Cole and Duvall, trustees, offered this parcel for sale, had sought to buy the land for his own benefit by the intervention of his own agent, and when it was finally sold had in the same manner bid, and the property was knocked down to his agent, but the trustees declined to accept the security offered by the appellant in lieu of the required deposit money. It is true the appellant testifies that he all the while intended to give all the shareholders the benefit of his purchase if he secured the property at either of these offerings of the same at public sale, but it is also true

he carefully concealed from all the other shareholders his unselfish intent. While the appellant protests that he was aware that a court of equity would compel him to treat his associate shareholders equitably, he also says that he had consulted with his attorney, and he had secretly bid for the seven-acre tract under the inspiration and advice he had received from his attorney, who had told him "Your way to do is to bid that in through a third party that you can trust, then you will hold the whip hand over them and not be dictated to as you have been heretofore." He concealed from every shareholder the fact that he was bidding for the property; he did not bid in person. At the first sale he procured Ricker to buy the property in Ricker's name for the appellant's benefit. Ricker sought in the equity court to prevent a resale by Cole and Duvall, trustees. The appellant denies that he authorized his agent, Ricker, to institute such suit. It is manifest, however, that Ricker had no motive nor interest in so doing, and that the appellant bid. At the second sale the appellant bid for the property through another agent, and in his name bought the property on February 23d, 1898, for about \$24,000, and failed to furnish the deposit money required, and immediately thereafter the auctioneer reoffered the property and sold it to the appellee, the highest bidder, for \$17,100.

We observe the appellant waited about five years after the sale of which he now complains and then filed the bill in equity, we are here considering, asking that the sale to the appellee be set aside on the ground that is impossible, that the court decree that the appellee Jenner hold the title to the property he purchased five years before in trust for all the shareholders in the "Crescent Heights" syndicate in proportion to their respective holdings, and that the appellee make an accounting with such shareholders.

The witness Gordon estimates the seven acres were worth about \$24,000 at the time of the sale, and about \$40,000 at the time the appellant filed this bill in equity. He testified that prior to the sale there was a great stagnation in real estate in this section, and that at the time of the sale the seven-acre parcel was worth from three to four thousand dollars per acre, but that about the time the appellant brought this suit the witness would have given from five to six thousand dollars an acre for this parcel. We will later advert to the long delay of the appellant in bringing this suit, and the circumstance that he waited until this land purchased by the appellee had greatly advanced in value.

Under the fifth, sixth, seventh, and eighth assignments of error the appellant further contends that the evidence shows that the sale of the land made to Jenner, the appellee, was collusive and unlawful, because the circumstances attending the making of the agreement between Jenner and the three shareholders associated with him, shows that the agreement was designed to defraud the appellant and the other shareholders.

The appellant testifies he first learned of the existence of this agreement when Campbell, one of the signers, filed a bill in equity against Jenner, the appellee.

It appears that the amended bill in the suit referred to was filed

December 21, 1898, and it seems that the appellant speedily gained knowledge of this effort of Campbell to make Jenner account respecting the purchase of the seven-acre tract. Jenner's testimony shows that he acted for the three persons and himself who joined in the agreement to purchase. It does not appear that he extended like opportunity to other shareholders to associate with him either before or after he became purchaser of the land. That the sale of Cole and Duvall, trustees, was in every respect fair is undisputed.

The effort of the appellant to show that there was no necessity for the sale of the land fails. The debt secured by the Gaither lien was due in January, 1893, and in October, 1897, Gaither, the holder of the note, in writing, instructed Cole and Duvall, trustees, to advertise and sell the tract because of default in the payment of interest due in July of that year. There is some evidence that Gaither did not insist upon the payment of the long over-due debt, and that he several times was indulgent, at the appellant's instance, in giving delay in the payment of the interest. When none of the parties concerned procured payment of interest, Gaither directed the sale to proceed, and later, at the instance of appellant, delayed the sale. It is clear that the appellee had several times advanced money to pay interest to prevent the sale of the land of the syndicate. Croissant and Johnson, trustees, were either unable or neglectful in the payment of interest upon the encumbrances, but there is no evidence to connect the appellee and his associates therewith, and there is much in the record to disprove collusion between these trustees and Jenner. It appears in the record that when an effort was made to assess the shareholders the appellant sought the aid of the court to restrain the assessment, and did thus restrain a certain assessment, though this proceeding was subsequent to the sale of the land to the appellee.

We have carefully examined the circumstance attending the auction sale whereat the appellee purchased this land, and we are convinced that in every respect the sale was fair and that the appellant's case utterly fails to show collusion. That the appellant was a bidder there was not disclosed. Jenner bid openly in his own name. Wright, representing Mrs. Hubbard, who held the second trust, was an open bidder for his client, and other persons bid upon the property. It is true that the appellant's bid of \$24,100 considerably exceeded the final sale to Jenner at \$17,100, and it is also true that Jenner's associates had empowered him to bid \$24,000, and that under their agreement to buy the property as cheaply as possible he was the highest bidder and became the purchaser when the property was immediately thereafter reoffered at the lower price named. The appellant attributes fraud to the agreement of Jenner and his associates to buy the property at the lowest possible price. It could scarcely be expected they would agree to buy it at the highest possible price; such an agreement would have been absurd. The question here is whether there was such community of interest or fiduciary relation on the part of the appellee and his associates with their fellow shareholders as forbid them to bid at all. If we conclude they could properly bid upon the land, it was natural they should bid at the

public bidding for the lowest bid for which the property could be obtained.

Had the price been grossly inadequate, the court below should have set the sale aside, not because these persons had not bid more, but because the price accepted by the trustees was deemed grossly inadequate. The court below ratified this sale in an appropriate proceeding in equity, and we are not convinced that the price was so inadequate that the court should have set it aside.

The appellant by his ninth assignment of error insists that the price was so inadequate as to suggest fraud. Mere inadequacy of price at a trustee sale is not of itself sufficient ground for vacating the sale. The inadequacy in this instance is not so gross as to shock the mind. While inadequacy of price is an auxiliary argument, allied with circumstances calculated to cast suspicion on the sale, it can not have that effect in this instance where the proof affirmatively shows the sale to have been absolutely fair, wherein the trustees, Cole and Duvall, acted with great propriety and good judgment, wherein every effort to show collusion or improper conduct on the part of Croissant and Johnson, trustees, or of Jenner and his associates, has absolutely failed.

In our opinion the appellant's attempt to reverse the learned court below rests upon two circumstances: The first, that the appellant bid up this property to \$24,100, and failed to deposit the cash required by the terms of the sale, and that thereupon the property was re-offered and was purchased by the appellee, the unquestioned highest bidder, for \$17,100; and secondly, that the appellee had entered into the agreement to purchase which we have before recited. In our opinion, there is no evidence in this record to prove fraud actual or constructive. There is a failure to show collusion between the defendants or any of them. We do not extend this opinion by a review of four or five trivial circumstances, most of which were innocent, the rest of which are unimportant. Several transactions relating to the three-acre tract, and most of them occurring after the sale to the appellant of the seven-acre tract of land, we deem so unimportant that we need not discuss them here.

The appellant's bill is plentiful in accusation, and his testimony in his own behalf abounds in suggestion of improper conduct, and the argument of counsel and their brief is plentifully supplied with expressions of understandings and the tacit consent of trustees, Croissant and Johnson, in behalf of Jenner and Spear, two of the purchasers, but the testimony falls far short.

To sum up the matters in the record, this is a case in which a number of persons, in a highly speculative period, bought lands from the appellant which he obtained at a small price, and which the shareholders took at a very high price. A long period of depression in real estate prices followed, during which the trustees of the syndicate could not sell the shares undisposed of at any reasonable price, and the appellees and others interested advanced interest money to delay sales by lien holders, and the appellant also endeavored to stay such sales. When, under Gaither's lien, the seven acres were offered at public sale, the appellant was on hand, a secret bidder, to buy on the



occasion. The appellee was usually there or thereabout watching the sale, and on the last occasion he openly purchased the property in his own name, and it thereafter appeared he had purchased in behalf of himself and three other shareholders.

We deem it unnecessary to review the authorities upon which the appellant here relies. We think the Supreme Court, in several cases quite similar to the case we are here discussing, have clearly stated the principles which lead us to affirm the judgment of the learned court below.

The proof in the record satisfies us that the appellee and his associates were unwilling to stand by and see their very considerable investment in the "Crescent Heights" syndicate lands swept away by a sale under a lien existing prior to the purchase of the land by the syndicate, and therefore agreed to buy the property in the hope that they would thus save the money they had invested. It also appears that Starkweather endeavored to do the same thing in the same way, and with a like intent and motive. The appellee, having a private agreement with his associates, bid openly in his own name. The appellant secured another person to bid, as we have said.

As the Supreme Court said in *Twin-Lick Oil Co. v. Marbury*: "In short, there was neither actual fraud nor oppression. No advantage was taken of defendant's position as director, or of any matter known to him at the time of the sale affecting the value of the property, which was not as well known to others interested as it was to himself, and that the sale and purchase was the only mode left to defendant to make his money." *Twin-Lick Oil Co. v. Marbury*, 91 U. S. 587, 588.

That the appellee occupies one of those fiduciary relations where his dealings with the subject-matter and with the parties having community of interests is viewed with jealousy by the courts and may be set aside on slight grounds, is a doctrine founded on the soundest morality and often recognized by the Supreme Court. *Twin-Lick Oil Co. v. Marbury*, *supra*, 589; *Kochler v. Black River Falls Iron Co.*, 2 Black, 715; *Drury v. Cross*, 7 Wall., 299.

"Defendant was at liberty to bid, subject to those rules of fairness which we have already conceded to belong to his peculiar position; for, if he could not bid, he would have been deprived of the only means which his contract gave him of making his debt out of the security on which he had loaned his money. We think the sale was a fair one. The company was hopelessly involved." *Twin-Lick Oil Co. v. Marbury*, *supra*, 590-591.

We have said that in this case we are convinced there was no fraud or unfair dealing on the part of the appellee and his associates in making the purchase, nor was there such gross inadequacy of price as would make the appellee's bid suggestive of fraud. Therefore, the case of the appellant here must rest on the fiduciary relation of the defendant, and in a case of that class, where this was the whole extent of the claim, not that the purchase shall be set aside and declared void for fraud of any kind, either express or implied, but that it should be upheld and made to operate as a resulting trust for the benefit of the complainant. The court was

speaking of a case in which an executor with absolute control over real estate and with power to sell any part thereof to discharge debts, and finally to sell all and distribute among devisees, himself bought the interest in the land of one of the devisees when sold under a judgment against such devisee, and the court said: "There is nothing in the transaction, from its inception to its final consummation, that imposed upon the defendant any duty incompatible with his right as a purchaser at the sale. The principle that a trustee may purchase the trust property at a judicial sale brought about by a third party, which he had taken no part in procuring, and over which he could not have had control, is upheld by numerous decisions of this court and of other courts of this country. *Prevost v. Gratz*, 1 Pet. C. C., 364, 378; *Twin-Lick Oil Co. v. Marbury*, 91 U. S., 587; *Chorpening's Appeal*, 32 Penn. St., 315; *Fisk v. Sarber*, 6 W. & S., 18. It is true that the rule upon this subject as stated by some text writers is more stringent than that stated in these cases. 1 *Perry on Trusts*, Par. 205; *Hill on Trustees*, 250. We think, however, that the language employed by them does not present a thorough and perfect generalization of the essential principles pervading the decisions upon this subject." *Allen v. Gillette*, 127 U. S., 589, 596.

From an examination of the adjudicated cases, we are of opinion that every contract between two or more individuals, whereby it is stipulated that one is to be the purchaser for the joint benefit of himself and others, is not to be held void as against public policy. It sometimes happens that unless two or more persons thus unite, and are thereby enabled to become purchasers, neither of them could have otherwise participated in the bid, and thus it may happen that the interests of the vendor are directly advanced by such an agreement. Upon all the testimony in this case, we are not convinced that this combination was designed to induce a sale at an inadequate price, but the plain design was that these associates wished to become purchasers at a price and fixed a limit as their maximum of their fair value of the property. When, however, such arrangement is made for the purpose and with a view of preventing fair competition, and by reason of want of bidders, to depress the price below the fair market value, the agreement and combination will be illegal. Fraud is not to be presumed where the contract is consistent with honesty of purpose and fair dealing.

Since the Supreme Court has decided that the doctrine of fiduciary relations here considered falls far short "of holding that no such contract can be made which will be valid," we conclude that this sale was not invalid, but whether liable to be avoided afterwards by other shareholders, upon the ground of fiduciary relations of the appellee to such shareholders, we need not discuss, although we think the facts in this case do not bring it within that rule. As was said by the court in *Twin-Lick Oil Co. v. Marbury*, *supra*, 591, the appellant "comes too late with the offer to avoid the sale," and the court held in that case that upon principle and authority and because of delay of nearly four years after the sale, the plaintiff had delayed too long in bringing his suit. In the case before us, where the appellee bought this real estate in times of depression, and during the subsequent five

years the land he bought had steadily increased in value, this appellant delayed five years before bringing this suit.

If we had serious hesitation in affirming the decree of the court below, this long delay on the part of the appellant should resolve all remaining doubts and determine us to sustain that decree.

The decree must be affirmed, with costs, and it is so ordered.  
Affirmed.

WEDNESDAY, *April 4th*, A. D. 1906.

No. 1538. April Term, 1906.

GEORGE B. STARKWEATHER, Appellant,

vs.

HERBERT W. T. JENNER, JOHN D. CROISSANT, JOHN O. JOHNSON,  
ANDREW B. DUVALL, and CHARLES C. COLE.

*Appeal from the Supreme Court of the District of Columbia.*

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof. It is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. JUSTICE MCOMAS,  
April 4, 1906.

Court of Appeals of the District of Columbia, April Term, 1906.

No. 1538.

GEORGE B. STARKWEATHER, Appellant,

vs.

HERBERT W. T. JENNER, JOHN D. CROISSANT, JOHN O. JOHNSON,  
ANDREW B. DUVALL, and CHARLES C. COLE.

Now comes the appellant, in propria persona, and prays an appeal to the Supreme Court of the United States in the above entitled cause; and further prays that the amount of the bond for costs may be fixed by the Court.

GEO. B. STARKWEATHER, *Appellant.*

(Endorsed:) No. 1538. Court of Appeals of the District of Columbia. Petition for allowance of appeal to Supreme Court, U. S. Court of Appeals, District of Columbia. Filed Apr. 23, 1906 Henry W. Hodges, Clerk.

TUESDAY, May 1st, A. D. 1906.

No. 1538.

GEORGE B. STARKWEATHER, Appellant,

vs.

HERBERT W. T. JENNER, JOHN D. CROISSANT, JOHN O. JOHNSON,  
ANDREW B. DUVALL, and CHARLES C. COLE.

On motion of Mr. George B. Starkweather, in propria persona, the appellant in the above entitled cause. It is ordered by the Court that said appellant be allowed an appeal to the Supreme Court of the United States, and the bond for costs is fixed at the sum of three hundred dollars.

*(Bond on Appeal.)*

Know all Men by these Presents, That we, George B. Starkweather, as principal, and The Metropolitan Surety Company, of New York City, New York, as surety, are held and firmly bound unto Herbert W. T. Jenner, John D. Croissant, John O. Johnson, Andrew B. Duvall and Charles C. Cole in the full and just sum of Three hundred dollars, to be paid to the said Herbert W. T. Jenner, John D. Croissant, John O. Johnson, Andrew B. Duvall and Charles C. Cole, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-eighth day of March, in the year of our Lord one thousand nine hundred and eight.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between George B. Starkweather, appellant, v. Herbert W. T. Jenner, John D. Croissant, John O. Johnson, Andrew B. Duvall and Charles C. Cole a decree was rendered against the said George B. Starkweather and the said George B. Starkweather having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Herbert W. T. Jenner, John D. Croissant, John O. Johnson, Andrew B. Duvall and Charles C. Cole citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof:

Now, the condition of the above obligation is such, That if the said George B. Starkweather shall prosecute said appeal to effect, and answer all damages and costs if he fail to make his plea good, then

the above obligation to be void; else to remain in full force and virtue.

GEORGE B. STARKWEATHER. [SEAL.]  
 THE METROPOLITAN SURETY COM-  
 PANY, [SEAL.]  
 By CHAS. A. DOUGLAS, [SEAL.]  
*Resident Vice-President.*

Attest:

HENRY J. HUNT, [SEAL.]  
*Resident 3rd Ass't Sec'y.*

[Seal of Metropolitan Surety Company.]

Sealed and delivered in presence of—  
 Witness—

BURT A. MILLER,  
 A. M. BIGELOW.

Approved by—

SETH SHEPARD,

*Chief Justice Court of Appeals of the  
 District of Columbia.*

[Endorsed:] No. 1538. George B. Starkweather, Appellant, vs. Herbert W. T. Jenner et al. Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Mar. 28, 1908. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, ss:

To Herbert W. T. Jenner, John D. Croissant, John O. Johnson, Andrew B. Duvall, and Charles C. Cole, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein George B. Starkweather is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 28th day of March, in the year of our Lord one thousand nine hundred and eight.

SETH SHEPARD,

*Chief Justice of the Court of Appeals  
 of the District of Columbia.*

Service accepted this 30<sup>th</sup> day of March 1908.

B. F. LEIGHTON.

[Endorsed:] Court of Appeals, District of Columbia. Filed Mar. 30, 1908. Henry W. Hodges, Clerk.

## Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and type-written pages numbered from 1 to 333, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of George B. Starkweather, Appellant, vs. Herbert W. T. Jenner, John D. Croissant, John O. Johnson, Andrew B. Duvall and Charles C. Cole No. 1538, January Term, 1908, as the same remains upon the files and records of said Court of Appeals.

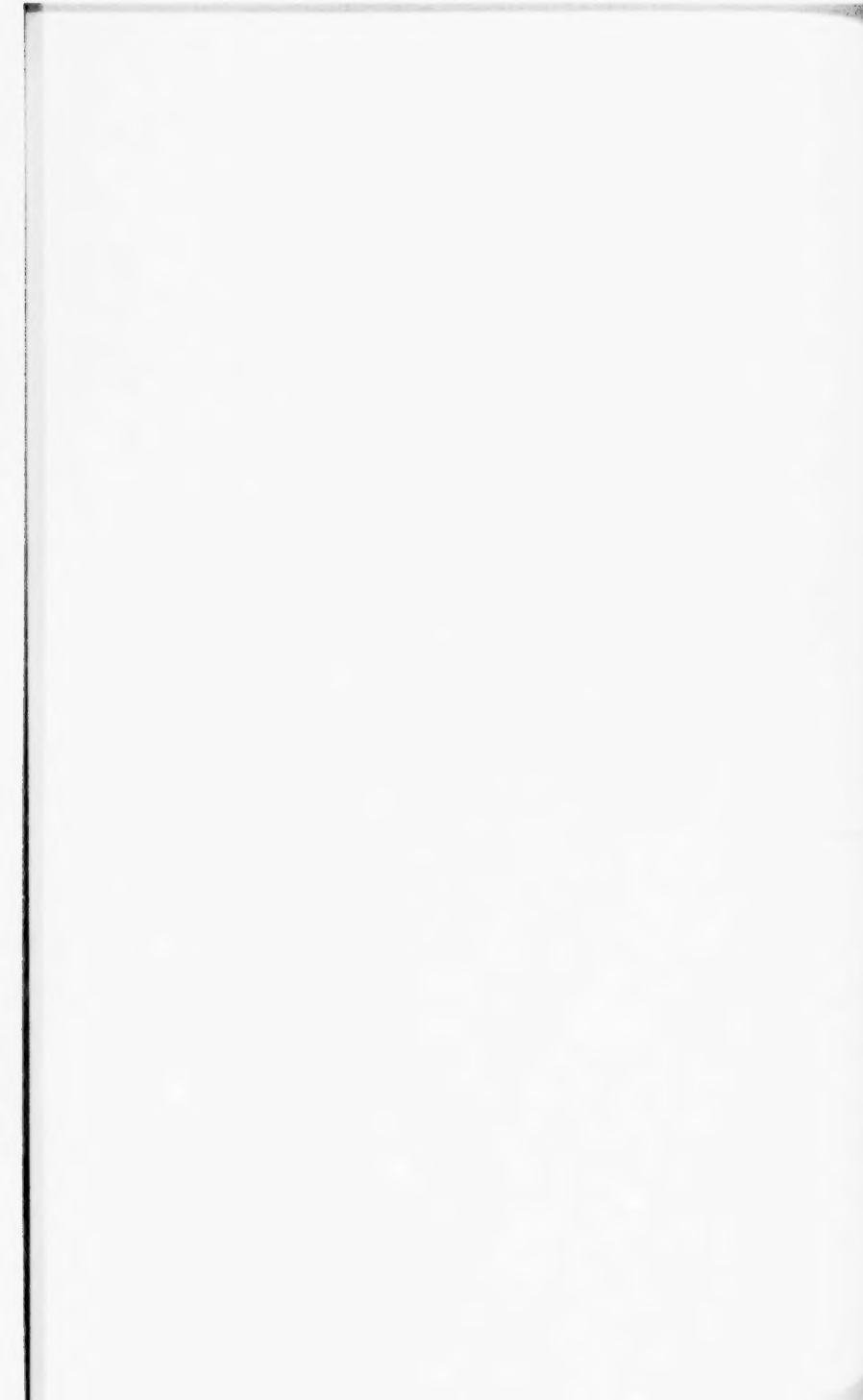
In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 30th day of March A. D. 1908.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,

*Clerk of the Court of Appeals of the District of Columbia.*

Endorsed on cover: File No. 21,092. District of Columbia Court of Appeals. Term No. 114. George B. Starkweather, appellant, vs. Herbert W. T. Jenner, John D. Croissant, John O. Johnson, Andrew B. Duvall, and Charles C. Cole. Filed April 4th, 1908. File No. 21,092.



JAN 25 1910

JAMES H. McKENNEY,  
CLERK.

IN THE  
**Supreme Court of the United States.**

OCTOBER TERM, 1909.

No. 114.

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GEORGE B. STARKWEATHER,  
*Appellant,*

vs.

HERBERT W. T. JENNER, JOHN D.  
CROISSANT, JOHN O. JOHNSON, *et al.*

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Appeal from the Court of Appeals of the  
District of Columbia.

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**BRIEF OF APPELLANT.**

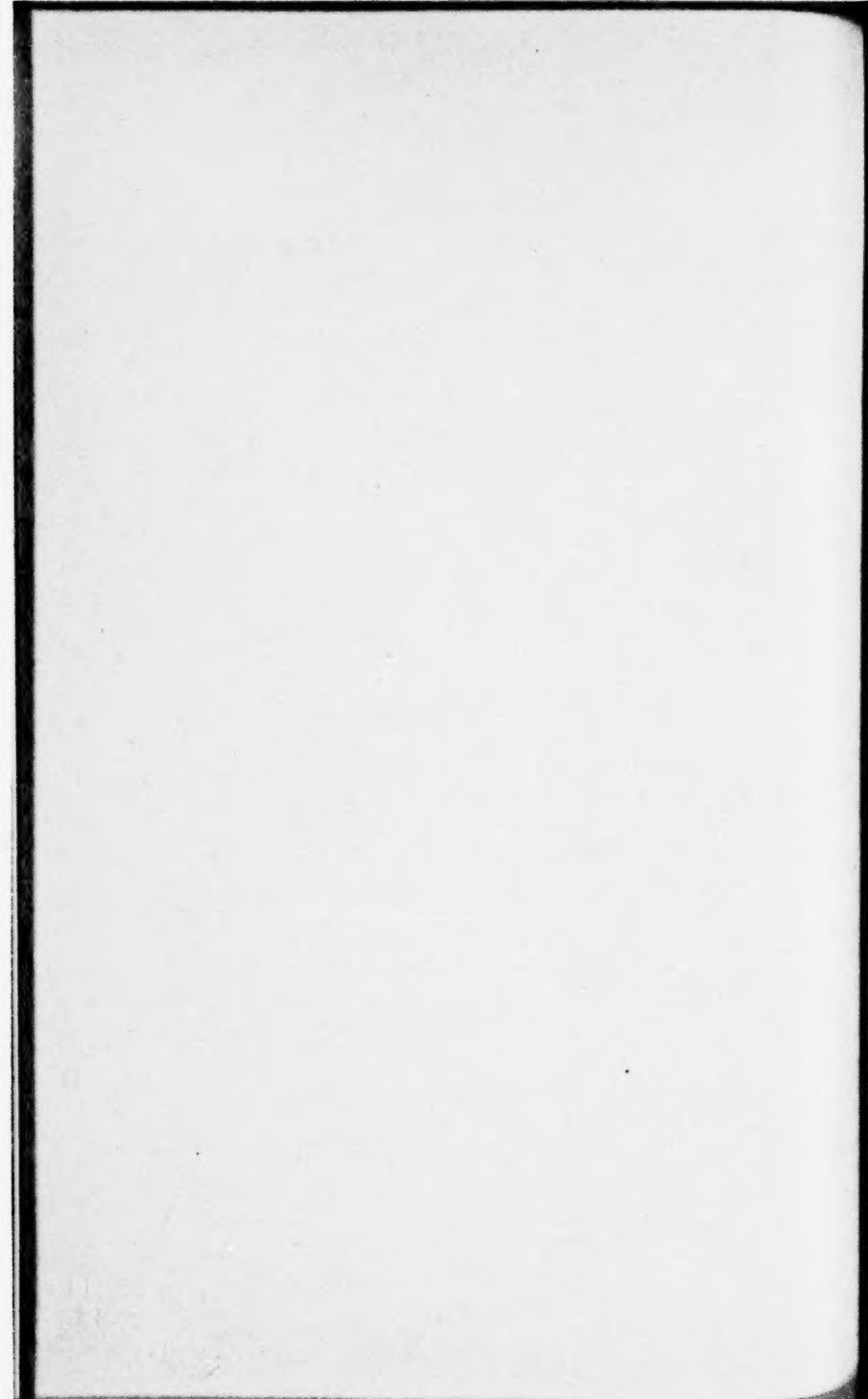
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RICHARD P. EVANS,  
*Attorney for Appellant.*

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IN THE  
**Supreme Court of the United States.**

October Term, 1909.

GEORGE B. STARKWEATHER, <i>Complainant—Appellant,</i> <i>v.</i>	} No. 114.
HERBERT W. T. JENNER, JOHN D.	
CROISSANT, JOHN O. JOHNSON,	
ANDREW B. DUVALL and CHARLES C. COLE.	

**BRIEF FOR APPELLANT.**

This cause comes up by appeal from the Court of Appeals of the District of Columbia.

The complainant and appellant, George B. Starkweather, the owner of a number of certificates or shares in an unincorporated land syndicate known as Crescent Heights, in the District of Columbia, filed a bill in equity in the Supreme Court of the District of Columbia against the defendants, praying that a deed of conveyance from the defendants Duvall and Cole, trustees, to the defendant Jenner, a member of said syndicate, of seven acres of the syndicate's land should be set aside and cancelled; or, in the alternative, that the court decree that said defendant Jenner holds the title to said property in trust for all the share or certificate holders; and that said defendant Jenner be enjoined from conveying said property, or any interest therein, and for an accounting (Rec. pp. 2-7).

The Supreme Court of the District of Columbia dismissed the bill after a hearing upon the merits; an appeal was taken to the Court of Appeals of the District of Columbia wherein said dismissal was affirmed upon the ground of the *laches* of complainant; and thereupon complainant appealed to this court (Rec. Op. Ct. of App. D. C.).

### The Case.

The appellant, George B. Starkweather, was, prior to May, 1892, the owner in fee of two adjoining tracts of land containing 400,000 square feet of ground, located on Spring Street between Fourteenth and Sixteenth Streets Northwest, in what was then known as Mount Pleasant in the District of Columbia. These two tracts are designated as the *Seven-Acre* tract and the *Three-Acre* tract, and they were respectively encumbered with certain indebtedness of record, set out in the transcript.

In May, 1892, the appellant agreed to sell and convey the said land to John D. Croissant and John O. Johnson, as trustees of a land syndicate to be organized by them, for the price of seventy-five thousand (\$75,000) dollars, to include the encumbrances, which the syndicate was to assume and pay, and also the cost of obtaining title to certain colored holdings.

There were certain written agreements by and between appellant Starkweather and Croissant and Johnson which finally culminated in two deeds from appellant Starkweather and wife to said Croissant and Johnson, trustees, the *Three-Acre* tract being conveyed by deed dated May 2, 1892 (Rec. p. 245), and the *Seven-Acre* tract by deed dated June 1, 1892 (Rec. p. 81).

Prior to this sale to trustees Croissant and Johnson, appellant Starkweather sold some parts of lots on the Spring Street front of the *Three-Acre* tract to colored

people, who built several small houses on their holdings. Under terms of Starkweather's sale to Croissant and Johnson, he had the right to repurchase these holdings, for the syndicate, upon his own terms, failing which the said trustees could purchase them and charge Starkweather at rate of 34 cents per square foot for same.

The said Croissant and Johnson, trustees, organized the syndicate upon the basis of the purchase price of \$75,000, divided into thirty shares at \$2,500 per share, each share representing a one-thirtieth undivided interest in the property, as tenant in common. Twenty-four of these shares were issued and sold at par; the remaining six shares were never issued nor offered for sale, so far as known.

A subscription agreement (Rec. p. 83) was signed by the subscribers to the shares and, subsequently, "Syndicate Certificates" (Rec. p. 85) were issued by the trustees under seal, and accepted by the subscribers under seal, in which the conditions of the trust, and the holdings and interests of the co-owners were set forth.

Under the terms of the purchase and sale appellant Starkweather was to receive a cash payment and fourteen of the syndicate shares (Ex. 5, Rec. p. 79), and was to be charged with the payments on account of the trust indebtedness, and at rate of not exceeding thirty-four cents per foot for purchase of the colored holdings on Spring Street front should he fail to repurchase them at his own price and cost, the remainder of purchase price to be paid in money (Ex. 6, Rec. p. 80).

The "Subscription Agreement" (Rec. p. 83) provided for payment of \$17,000 of trusts on the property and exempts Starkweather from any assessment on account of these trusts. Of course this trust indebtedness and all interest and arrears of taxes to dates of respective deeds to Croissant and Johnson, trustees, were charged against

Starkweather's sale price. After the transfer of title these trusts became the syndicate's debts—not Starkweather's—and it became the duty and care of the trustees and of the other certificate holders to provide for their expense and payment.

Under the terms of the "Syndicate Certificate" (Rec. p. 85) the trustees' declaration in trust—accepted and subscribed to, under seal, by the co-owners—each certificate and interest thereunder is subject to assessment pro rata for all the "expenses incurred in the execution of the trust," enforceable by sale of the owner's interest in the property, in case of default in paying the assessment.

It is a matter of record that the said trustees, Croissant and Johnson, made no attempt to carry out that provision of assessment which all co-owners had agreed to under seal, and which safeguarded the interests of all the parties in the syndicate, including the appellant Starkweather, but instead are alleged to have borrowed money of certain of the syndicate members without authority. They permitted the *Seven-Acre* tract to go to sale at a low price for a deed of trust indebtedness which had been assumed by said syndicate trustees Croissant and Johnson, as part of said purchase price, because of non-payment of a small amount of over-due interest money. What became of the \$32,500 or \$35,000 cash in hand the trustees Croissant and Johnson received from subscribers to the purchase (Rec. p. 64) has never been shown or explained.

The record shows this *Seven-Acre* tract, the subject-matter of the case at bar, was bought in at said sale on February 3, 1898, by appellee Herbert W. T. Jenner as trustee for parties not named. Said appellee Jenner was and is one of the members of the syndicate, and tenant in common with the appellant Starkweather; and he signed the subscription agreement (Rec. p. 83) and the syndicate certificate he held (Rec. p. 85), and he was

thereby bound to his co-tenants and especially to observe and perform the syndicate obligations towards the appellant Starkweather in the protection and payment of the very trust indebtedness at the foreclosure of which he bought the said seven acres as *trustee*, at a price much less than its real value.

This encumbrance was for the sum of \$7,553.34, secured by a deed of trust given and executed by the appellant, in which were named as trustees the defendants herein, Duvall and Cole.

The principal sum had fallen due but had been extended (Rec. p. 73) and was not over due at time of sale.

The holder of the note, Mr. Gaither, did not demand the principal, but only the semi-annual interest, about \$226.50 (Rec. p. 32); but the syndicate trustees, the defendants Croissant and Johnson, and the defendant Jenner, went to the office in Washington of Gaither's agent, Davidson (Rec. p. 73), and told him they would pay no more interest and that he could sell the property. The holder, Thomas H. Gaither, of Baltimore, stated he was satisfied with his investment, and wanted his money to remain there, but that "*the trustees (Croissant and Johnson) declared that they would not pay any more interest, implored him to sell them out, wanted to be sold out*"; (Rec. p. 39) and he granted extensions and postponements of the sale, at the personal request of the appellant Starkweather.

Fifty-one days prior to this purchase of the land at auction by defendant Jenner, he (Jenner) had entered into a secret agreement with three other shareholders in said syndicate, *certainque trust*, and tenants in common in said land, to buy the same at the auction sale mentioned, and "to bid in the property for as small a sum as possible" (Rec. p. 84, Ex. 9) for the sole benefit of himself and the three last-mentioned shareholders, to the impairment

and exclusion of the rights and interests of the complainant and of all the other syndicate shareholders. The defendant Jenner now claims to hold full right and title to said land by virtue of the auction sale and conveyance aforesaid.

The conduct of the appellee Jenner, in connection with appellees Croissant and Johnson, syndicate trustees, constituting an essential element in the appellant's case, the following transactions with reference to the *Three-Acre* tract are here set forth:

On the 6th day of April, 1895, about three years previous to the said sale of the *Seven-Acre* tract (Rec. p. 258), the appellees Croissant and Johnson, syndicate trustees, conveyed by fee simple deed to the appellee Jenner sixteen lots on the Spring Street front of the *Three-Acre* tract, nominally for repayment of taxes made by said Jenner amounting to about sixty (\$60) dollars (Rec. p. 254, Jenner), and some verbal understanding with the trustees relative to a share of the profits Jenner might make in handling them as his own property.

Upon this transaction coming to appellant Starkweather's notice he filed a bill in equity No. 16,612, still pending (Rec. p. 256), for cancellation of said deed to said Jenner, for specific performance of the syndicate agreements, and for an accounting; and in consequence thereof the appellee Jenner reconveyed said sixteen lots to said syndicate trustees on the 28th day of January, 1898 (Rec. p. 242).

Thereupon, and coincidently, said trustees Croissant and Johnson made and executed a deed of trust on the *Three-Acre* tract, to secure the payment of their four promissory notes amounting to \$3,648.26 to said appellee Jenner and Ellis Spear, syndicate members, and one Henry J. Gross, a presumed stranger. These notes were alleged to have been given by said Croissant and Johnson,

trustees, to said payees, for money advanced, loaned and used for benefit of the syndicate. The trustees named in said deed of trust were S. Herbert Giesy, and Brainard H. Warner, who were invested with the usual powers to sell the property in case of default in payment of said notes, payable one year after date. The trustees Croissant and Johnson made default, as usual, and let said *Three-Acre* tract go to sale by said trustees, S. Herbert Giesy and Brainard H. Warner, named in the trust; but appellant Starkweather again intervened by his bill in Equity No. 20,360, and on final hearing it was held by Mr. Justice Barnard (Opinion, Return to Certiorari) that the syndicate trustees Croissant and Johnson were bound by their declaration in trust—the said syndicate certificate—which constituted a sealed contract between the trustees and the co-owners, and that they should have proceeded under their powers to assess the co-owners for the necessary expenses, and that they had no power to give said deed of trust notes, and Justice Barnard decreed said deed of trust null and void, and set it aside and perpetually enjoined its operation and execution. This was a final decree.

The testimony taken in said cause disclosed, as shown in this record, that said notes exhibited and proven in this cause were disingenuous and unique.

Two of the notes were made payable to appellee H. W. T. Jenner, one for \$180, and the other for \$535.35; the note for \$180 was for benefit of S. Herbert Giesy, one of the trustees named in said annulled deed of trust, with power to sell (Rec. p. 239)

The note made payable to said Henry J. Gross, for \$554.12, was also for benefit of said trustee Giesy (Rec. p. 239), who caused it to be transferred by said Gross (who had no interest in it) (Rec. p. 239) to the other trustee Brainard H. Warner, who also attempted to sell



said property to secure payment of said Warner and Giesy notes, among others. These notes for benefit of said trustee Giesy are claimed to have been given, on the *syndicate account*, in part consideration for said Giesy's legal services rendered the trustees Croissant and Johnson in their defense to appellant's bill (Eq. 16,612) for specific performance, accounting, and reconveyance of said lots from Jenner, which is still pending.

The note for \$2,378.79, made payable to Ellis Spear, was shown to be mostly for benefit of said trustees Croissant and Johnson, appellees, who executed the note and secured it upon the property of their co-owners, being the said Three Acres. Spear's interest was claimed to be between \$800 and \$900 (Rec. p. 233), the remainder was to be paid to said Croissant and Johnson.

It is shown that the trustees Croissant and Johnson were indebted to the syndicate to an amount equal to their claim under said note (Rec. p. 240). And nowhere is it positively shown that any of this money was actually expended for the benefit of the syndicate. The important witness, John O. Johnson, surviving trustee, who might have testified on this point, was not called or produced. Appellee Jenner and said Spear, the only apparently active members of the syndicate, and the attorney Giesy, *knew that said trustees Croissant and Johnson were indebted to the syndicate (Rec. p. 240) and had not assessed the shareholders for alleged expenses as provided for in the syndicate agreement, and yet stood by and permitted and abetted their making said notes and deed of trust, securing payment upon the syndicate property for their own benefit, and agreed to the attempted sale under said deed of trust, and opposed in court the proceeding to prevent said attempted sale and annul the trust (in Equity 20,360) brought by appellant Starkweather (Rec. p. 242).*

The deed from Jenner reconveying said lots to trustees

Croissant and Johnson, and the deed of trust from said trustees, appellees, securing payment of said notes on said *Three-Acre* tract, were executed on the same date (January 28, 1898) and recorded February 3, 1898 (Rec. pp. 242, 227 and Return to Certiorari), *being the same day and date that said appellee Jenner purchased the Seven-Acre tract, the subject of this suit.*

The collusive conduct of the appellees Jenner and Croissant and Johnson, trustees, with others, in reference to the *Three-Acre* tract, and in regard to the other matters, as appears in the foregoing presentation; and their failure to keep their agreements with appellant Starkweather, and to pay off the encumbrances upon said syndicate property; their failure to account; and, finally, their invitation and determination to have the *Seven-Acre* tract sold when there was no occasion therefor, convinced the appellant that there was an agreed purpose upon the part of appellees Jenner and Croissant and Johnson, trustees, to sacrifice his interest in said syndicate and to convert the syndicate property to their own use and ownership, and under the advice of counsel, after exerting every effort in a vain attempt to prevent the sale of said *Seven-Acre* tract; he attended the sale and re-sale of said property, under the Gaither trust, and bid through an agent at said sales, to prevent the property from being sacrificed and to prevent it passing into the ownership of strangers, and preserve it in the syndicate, and he paid out some \$1,000 in said efforts, bidding as high as \$24,200 therefor (Rec. p. 56), but the property was eventually sold to said appellee Jenner, trustee, at \$17,100, although he was authorized by the secret agreement between himself and R. G. Campbell, Ellis Spear, E. S. Parker, all members of said syndicate and tenants in common with the appellant, to pay \$24,000 for said property as a "small price" (Rec. p. 154, Ex. 9).

Within a short time after said purchase of said syndicate property by appellee Jenner as "Trustee," a bill in Equity No. 19,192 was filed by said R. G. Campbell (Rec. p. 246) as complainant against said Herbert W. G. Jenner, defendant, in which he disclosed the said "secret agreement" to purchase said property "*for as small a sum as possible*," and charged said Jenner with failure to convey his agreed interest in said property, and claimed specific performance.

The filing of this original bill informed appellant of the true purchasers of said seven acres, and that they were co-tenants, not strangers, and as soon as possible, thereafter, he filed his original bill in this cause, being numbered 20,205, only thirteen numbers subsequent to the Campbell bill.

After long delays and many continuances, appellant's original bill was dismissed upon demurrer, with leave to amend, and appellant filed his amended bill, now pending in the case at bar, on April 1, 1903.

### **Things Alleged in the Pleadings, and Things Admitted to be True Therein.**

The complainant's amended bill sets forth—

(Rec. pp. 2, 3.) The capacity and right in which the complainant brings the suit against the defendants in the capacities, respectively, to wit, "the defendants Croissant and Johnson are sued as trustees under a certain deed in trust set forth in Record (pp. 81, 82), and the defendants Andrew B. Duvall and Charles C. Cole are sued as trustees under a certain deed of trust set forth in Record (Return to Certiorari), the appellee Jenner in his own right.

(Rec. pp. 3, 4.) That on the 2d day of May, 1892, and for some time prior thereto, complainant was the owner of the land in question, and that certain agreements had

then been entered into between complainant and Croissant and Johnson, as trustees, for a certain syndicate of persons known as and called the "Crescent Heights Syndicate," and that said trustees "by virtue of the power and authority conferred upon them by the persons interested in said purchase," made and executed "thirty syndicate shares or certificates each of the value of \$2,500, representing the amount of \$75,000, which was agreed to be paid to the complainant for the purchase of said property"; that ELEVEN of said shares were delivered by said trustees to complainant as part payment for said land, of which the complainant is *now owner of four of said shares*; and that six of said thirty certificates made and executed by Croissant and Johnson as trustees "remained in the possession of the said trustees, who now and ever since have held them without making any disposition thereof so far as this complainant is informed and believes."

(Rec. p. 4, par. 3.) That the said six shares were held by the trustees Croissant and Johnson to be sold to meet the payment of a certain incumbrance for \$7,553.34 upon said seven acres of land secured by the complainant's deed of trust, by him executed and delivered to defendants Duvall and Cole (see Return to Certiorari) prior to the making and delivery by the complainant of the deed to Croissant and Johnson, trustees, above referred to (see Rec. pp. 81-83); and (Rec. p. 4) that "the said trustees (Croissant and Johnson) unlawfully, illegally and fraudulently, and in violation of their duties as trustees, and in combination, confederacy and unlawful and fraudulent collusion with the appellee Jenner for the purpose of securing him, the said Jenner, an unlawful and fraudulent advantage in the purchase and acquisition of said property, permitted, allowed, invited and insisted that said property, to wit, the said *Seven-Acre* tract so mortgaged as aforesaid should be advertised and sold, and the same

was accordingly advertised and sold, to wit, on February 3, 1898, to the appellee Jenner for the sum of \$17,100," and a conveyance thereof made to said Jenner by the trustees Duvall and Cole aforesaid.

(Rec. pp. 4-6, pars. 4, 5, and 6.) That it was the duty and in the power of trustees Croissant and Johnson to pay the interest due under the deed of trust held by Duvall and Cole as trustees; and to assess the shareholders *pro rata* to meet "such interests and the expenses of holding said property, but they refused, failed and neglected to make such assessments, and the interest being in default, the property was sold as aforesaid"; that certain other parties "including the late Robert G. Campbell, would have bid at such auction, but at the special request of the defendant Jenner, and in fraud of the rights of the complainant and other share or certificate owners and under and in compliance with an agreement and understanding had with him, the said Jenner," they refrained from bidding, and thereby the said Jenner was enabled to purchase said land for the sum of \$17,100 at said auction, in violation of the complainant's rights as a shareholder, and of the rights of other shareholders, and to their loss.

(Rec. p. 6, par. 6.) Alleges certain acts and conveyances relating to the said ten acres of land and to the said *Seven-Acre* tract on part of defendant Jenner tending to show the purpose of said Jenner "of securing a fraudulent and undue advantage of the other certificate or shareholders" and of the complainant.

The defendant Jenner's answer admits:

(Record, pp. 8-11.) That six of the shares "remained in the possession of said trustees Croissant and Johnson and were never disposed of by them," as stated in the complainant's bill; "that the said Croissant and Johnson were authorized and empowered to assess the shareholders

or certificate holders for the share or *pro rata* amount due by said certificate or shareholders to meet the interest and expenses of holding said property, and that they failed to execute this power": admits that "the interest was paid by the said trustees from the moneys obtained from himself and others interested in said syndicate, who desired to prevent a sale under said trust, till after the filing of the suit in equity, No. 16,612, as aforesaid, and until the year 1897": sets forth that it was as much the equitable and legal duty of complainant to pay his *pro rata* share of the sums due on the land "as it was of this defendant or any other shareholder," and that the complainant never contributed toward the payment "of his part of the interest" after he deeded the property to Croissant and Johnson; and admits that "*the trustees, by general consent, tacitly, if not actually given, omitted to assess the shareholders as they were authorized to do.*"

(Rec. pp. 10, 11.) Admits the purchase at auction by himself (defendant Jenner) for \$17,100 on the 3d day of February, 1898, and further, "this defendant (Jenner) says that he purchased said property for himself and certain other members of the syndicate who were willing to join with him and contribute their proportional part of the purchase money of said property": that at that time he asked certain shareholders to join in making the said purchase; that some of those so asked joined with him, and others did not; that "after he had made the said purchase, certain of the shareholders came forward and asked to have an interest in the same; and to those who were willing to pay for the same he sold interests at the same proportionate price as paid by him; that he did not refuse an interest to any shareholder who was willing to pay for the same."

(Rec. p. 10.) Defendant Jenner denies all the allegations of collusion and fraud set forth in the complainant's

bill; and alleges that the said auction sale was fairly conducted in all respects and that he was the highest and best bidder therefor.

The answer of defendants Duvall and Cole admits—

(Rec. pp. 13, 14.) That at public auction on the 3d day of February, 1898, as trustees, under the deed of trust referred to in complainant's bill, they sold the land in question to the defendant Jenner for \$17,100, and that they disbursed the said money under the "direction of this court in equity cause No. 19,856"; and "that they have no knowledge of any combination by and between the said Jenner and any other persons whomsoever to improperly acquire said property or defraud the complainant."

The answer of defendants Croissant and Johnson admits—

(Rec. pp. 15, 16.) That the complainant conveyed the land in question to them "as trustees for the benefit of the said syndicate" by the deed mentioned in the complainant's bill; that "these defendants issued thirty shares or certificates each of the face value of twenty-five hundred dollars for the purpose of selling the same and raising the money to pay said complainant what was due and to free the said land from encumbrances, and that these defendants transferred and delivered to the said complainant *eleven of said certificates* in part payment of the sum that was due him"; and "they also admit that six of said certificates of shares in said property issued by them as aforesaid, have never been sold or transferred by the defendants but still remain in their possession"; and alleges that the six certificates of shares were held for the purpose of selling the same and paying the money to the use and benefit of the syndicate in such manner and for such purposes as might seem at the time

to be most advantageous for the interests of the said syndicate."

(Rec. pp. 16-18.) That "at the *maturity* of said deed of trust they were wholly unable to raise any money by the sale of said certificates, that they had no power and were under no duty to raise money to pay off the debt due under the deed of trust by making an assessment against the certificates of stock; that "they had no way of enforcing payment of an assessment except by the sale of the certificates assessed," and sets forth that it was not their duty "to make any assessment whatever upon certificate holders unless requested to do so by at least a majority in amount of such holders "; and that "it was absolutely beyond their power, as a financial proposition, to raise the money out of any assets of the said syndicate in order to have *liquidated said deed of trust* and prevented said sale "; denies all fraud or collusion with Jenner, or with anybody else in relation to the sale by said Duvall and Cole and the purchase by said Jenner of the said seven-acre tract."

### **The Appellant Contends**

(*First.*) That defendant Jenner and the three other shareholders referred to, being in common with himself and with the other shareholders *cestuis que trust*, and shareholders and tenants in common in the property, the land in question, having with the complainant and all the other shareholders a "community of interest" in the land, did not have legal capacity or equitable right to purchase and hold the land for himself, or for himself and the said three associate shareholders, as against the rights and interests of the complainant and against the rights and interests of the other shareholders.

(*Second.*) That the purchase of said land by said defendant Jenner was made in pursuance of a secret, im-



proper and unlawful agreement entered into by him (Jenner) and the three shareholders aforesaid, in fraud of the complainant's rights.

(*Third.*) That the circumstances preceding and leading up to the sale of said land at auction, and accompanying the said sale, constitute collusion and fraud on the part of Jenner and certain other of the defendants named in this action, to enable said Jenner to secure an unlawful and fraudulent advantage in the purchase of said land, against the rights of the complainant and of the other shareholders having common interests in said land, and at an inadequate price.

The prayer of the complainant is, that the deed of conveyance from defendants Duvall and Cole to the defendant Jenner, of February 3, 1898, may be set aside and cancelled; or, *in the alternative*, that the court decree that said defendant Jenner holds the title to said property in trust for the share or certificate holders in said syndicate representing interests in said property in proportion to the respective shares or interests therein of the members of said syndicate; upon proper terms of reimbursement upon an accounting.

### Assignment of Errors.

1. The court erred in dismissing appellant's bill of complaint.

2. The court erred in holding and adjudging that the appellant came too late to avoid the sale, and was not entitled to relief because of his *laches*.

3. The court erred in refusing to hold that the defendant Jenner—being with the complainant and all other members of the syndicate, in equity, a tenant in common of the land in question, and having a "community of interest" in the same, and in the profits or loss ensuing from the purchase and sale of said land for the common

benefit—had no legal capacity, or equitable right, to purchase and hold said land at the auction sale in question individually or for himself, or in trust for himself and three shareholders, parties to the said secret agreement, to the exclusion of the other members of the syndicate, including the complainant.

4. The court erred in refusing to hold that the agreement made by the defendant Jenner and three other syndicate shareholders to bid the said syndicate property for their own ownership "at as small a price as possible," was an agreement to prevent competition and against public policy; and in refusing to hold that it was a secret, collusive and unlawful agreement in fraud and violation of the rights of the complainant; and that it rendered the said sale invalid and inoperative as to the complainant and the other shareholders not parties to said secret agreement.

5. The court erred in not holding that the making and entering into the agreement known as the "power of attorney," whereby the defendant Jenner secretly and fraudulently combined with certain other shareholders to attempt "to bid in the property for as small a sum as possible" (the land in question) did when put into execution by him by the purchase of the same at a much less price than the real value of the land, constitute a fraud upon the rights of the complainant and the other members of the syndicate, and render thereby the said sale fraudulent and void as against the complainant and such other shareholders.

6. The court erred in refusing to hold that the failure of the defendants Croissant and Johnson, trustees, themselves shareholders in said syndicate, to apply the funds in their hands from the sale of said syndicate shares toward the payment of the trust-secured debt of \$7,553.34 and the interest thereon; and their failure to use the

means in their power by assessment of the shareholders, and sale of reserved syndicate shares, to meet the interest charges upon said debt, before consenting to and inviting the auction sale under the said deed of trust to Duvall and Cole (together with evidence in the case of their questionable dealings with said defendant Jenner in respect to the syndicate property), sustained complainant's contention of fraudulent collusion of said Croissant and Johnson, trustees, with said defendant Jenner to procure and bring about the sale of said syndicate property under the said trust, in violation and fraud of the right and interests of the complainant and other shareholders.

7. The court erred in refusing to hold that the sale of said land to Jenner at said auction sale for the price of \$17,100 at the alleged and improper and illegal re-crying of said property at said sale after the sum of \$24,100, or thereabouts, had been bid by Jenner for the same, at the said "first crying" of the property by the auctioneer immediately prior thereto; accompanied by bids made by other persons for sums approximating \$24,000, or thereabouts, at said first crying, as by the evidence in this case appears, constituted an illegal and void sale, against public policy, and in derogation of the rights of the complainant and of the other shareholders in said syndicate.

8. The court erred in refusing to hold that the gross inadequacy of the price for which the said land was sold at the auction in question to said Jenner—taken in connection with the circumstances of said sale, and of the collusive, fraudulent, improper and unfair acts and conduct of said Jenner prior thereto—did not raise and constitute the presumption and fact of fraud as to said sale as against the rights of the complainant and the other shareholders of said syndicate.

9. The court erred in not holding that the acts of

fraud, and covin and collusion alleged in the complainant's bill against defendant Jenner, and against said Jenner and the defendants Croissant and Johnson, trustees, were sufficiently established by the circumstantial evidence in this case as to maintain the issues in behalf of appellant.

### **Facts Set Forth in Complainant's Exhibits Nos. 7, 8 and 10.**

*Exhibit No. 7*, deed from Starkweather and wife to Croissant and Johnson (Rec. pp. 81, 82), declares the latter to be in effect joint tenants in the land in question, "in trust for the sole use and benefit of the persons who have contributed to the purchase of said described land." The deed further declares such persons (the shareholders) to be "tenants in common, in the shares and proportions in which they have respectively contributed."

*Exhibit No. 8*, the agreement signed by all the shareholders (Rec. pp. 83, 84), provides for the manner of payment for subscriptions by the shareholders, and that the shares subscribed for by complainant Starkweather "shall be considered as fully paid," names Croissant and Johnson as trustees of the shareholders to manage and sell the property, and "to divide the profits between us, the undersigned (shareholders) in proportion to the amounts paid in by us," and assumes \$17,000 of trust indebtedness and agrees to pay the same, on account of purchase price.

*Exhibit No. 10*, one of the syndicate certificates issued in form to all the shareholders (Rec. pp. 85, 86), reaffirms the trusteeship of Croissant and Johnson, "as joint tenants in fee," created in the deed last named, and provides that the interest of the several shareholders "shall be subject to assessment for its proportionate part of money necessary to pay the expense incurred in the execution of the trusts as provided in the deed to said

trustees hereinbefore recited," and for the sale of such shares "at public or private sale" in default of the payment of such assessment by the shareholders thereof.

It thus appears upon the face of the three instruments last named, as set forth in the record, that Croissant and Johnson were joint tenants and that they were to hold the legal title to the land *in trust* for the use and benefit of the shareholders, with certain duties and powers as therein expressed; and furthermore that Croissant and Johnson, trustees, as subscribers to the syndicate agreement (Ex. No. 8), and as shareholders in said syndicate, were tenants in common in said land with this appellant Starkweather, and with all the other members of said syndicate, including the appellee Jenner, and that they (Croissant and Johnson) and all the shareholders were also in the relation, one to the other, of co-partners, at least as far as that relationship is created by a division of the profits and a sharing of the losses which might result from the purchase and sale of the land in question.

It further appears in the transcript of record that the bill in equity, filed by Robert G. Campbell against the appellee Jenner, was numbered No. 19,192 (Rec. p. 248), and although the date of filing his original bill is not stated, the date of filing his amended bill is certified as December 21, 1898.

The appellant's bill, herein, is numbered 20,205, ~~and being only 13 numbers behind the Campbell bill, must have been filed very shortly thereafter, possibly a week or ten days later.~~

Appellant's bill in equity No. 20,360 (Rec. p. 226) is certified as having been filed April 18, 1889, and in that bill on page 229 of the Record, midway of the page, it recites, "and there is also a suit now pending between complainant and defendant Jenner with respect to a

certain portion of the property owned by the said syndicate, said latter case being known as equity No. 20,205."

This identifies the bill of complaint in the case at bar as having been filed long prior to said bill No. 20,360 (155 cases later), which was filed April 18, 1899, less than fifteen months after the sale of said *Seven-Acre* tract to appellee Jenner.

### **Assignment of Error Nos. 1 and 2.**

The learned court below, in affirming the decree dismissing the bill of complaint, states as follows:

"Since the Supreme Court has declared that the doctrine of fiduciary relations here considered falls far short 'of holding that no such contract can be made which will be valid' we consider that this sale was not invalid; but whether liable to be avoided afterwards by other shareholders, upon the ground of fiduciary relations of the appellee to such shareholders, we need not discuss, although we think the facts in this case do not bring it within that rule. As was said by the court in *Twin-Lick Oil Co. v. Marbury*, 91 U. S. 591, the appellant 'comes too late with the offer to avoid the sale;' and the court held in that case that upon principle and authority, and because of delay of nearly four years after the sale, the plaintiff had delayed too long in bringing his suit. In the case before us, where the appellee bought this real estate in times of depression, and during the subsequent five years the land he bought had steadily increased in value; *this appellant delayed five years in bringing this suit.*

"If we had serious hesitation in affirming the decree of the court below, this long delay on the part of the appellant should resolve all remaining doubts and determine us to sustain that decree. The decree must be affirmed, with costs, and it is so ordered."

It is clear that the ground of affirmance by the Court of Appeals was the assumed *laches* of the complainant in

delaying for five years the filing of his bill to avoid the sale to the appellee Jenner. In thus deciding the learned court was misled by the date of the filing of the complainant's *amended bill*, namely April 1, 1903, which was truly over five years subsequent to the said sale; but as shown by the next preceding references to the transcript of record, the appellant permitted of no delay, but was prompt in filing his bill upon the heels of the ~~Campbell original bill No. 19,192, which was, of course, filed prior to the date of filing the Campbell amended bill December 21, 1898 (Rec. p. 248). As has been stated,~~ the serial filing number of complainant's bill was 20,205 (Rec. p. 2), only thirteen (13) numbers subsequent to the serial filing number of the Campbell bill, and consequently the dates of filing the original bills in both cases must have been very close together and certainly prior to December 21, 1898, the date of filing the amended Campbell bill in equity 19,192, and in less than eleven months after said sale to said appellee Jenner—February 9, 1898.

And it has also been pointed out that in equity bill No. 20,360 filed April 18, 1899 (Rec. p. 226), the pending bill of the appellant, No. 20,205, is noticed and referred to (Rec. p. 229), and the serial filing number of 20,360 is 155 subsequent to the bill number 20,205, in the case at bar.

Consequently, it follows as a matter of fact that there was no *laches* upon the part of appellant in the assertion of his rights in the premises.

It may be well to note that the question of *laches* was not raised in briefs of counsel in the court below.

The property in question not being speculative mineral or oil property, but stable city unimproved realty, the lapse of time of less than a year in filing appellant's bill after said sale, and immediately after the appellant's first in-

formation, through the media of the said Campbell bill, of the identity of the purchasers of said property would not as a matter of law charge him with *laches*.

It is submitted that the court below erred in its judgment of affirmance on the ground of appellant's *laches* and that said judgment should thereupon be reversed.

Harwood *v.* Ry. Co., 17 Wall. 79;

Twin Lick Oil Co. *v.* Marbury, 91 U. S. 587.

*Verzie v. Williams & How.* 134.  
**Assignment of Error No. 3.**

The contention of the appellant is, that the relationship of the shareholders, one to another, regarding the land in question, whether considered to be that of partners, tenants in common, or otherwise, was, in effect, such as to create among and between them, fiduciary and trust limitations, duties and capacities; and that it was unlawful and inequitable for the appellee Jenner and the three other shareholders associated with him to combine to "bid in the property for as small a sum as possible" at its sale at auction under the deed of trust for his and their sole and personal gain, attempting thereby to extinguish the title and rights therein of the appellant and of all the other shareholders. The appellant claims that the appellee Jenner by means of the secret agreement mentioned (power of attorney, Exhibit No. 9; Rec. pp. 84, 85) and by other means as by the evidence in this case is shown, attempted to gain and did gain an unlawful and inequitable advantage over the appellant in the purchase of the land; and that such purchase, so made, ought to be set aside and declared null and void; or in the alternative, should be held to be a constructive trust enuring to the benefit of the appellant and of all the other shareholders interested in said land.

But aside from the consideration of the matters of fraud



in this case alleged, and as supported by the evidence herein, it is claimed on part of the complainant that neither the appellee Jenner nor any combination of shareholders could have legal capacity or equitable right to purchase the land to the exclusion of the interests and rights of the other shareholders. For it is clear that whatever relation the shareholders of the syndicate bear to each other, whether *estatis que trust* under the deed from complainant Starkweather to Croissant and Johnson, or tenants in common or partners under the syndicate agreement and syndicate certificates, as may be determined by this court, they have unquestionably a "community of interest" in the land in question; and the decisions of the courts appear to bear out the doctrine that where there is a "community of interest" in property or lands there is a community of right and duty attached thereto incumbent upon all the members of a syndicate or association like the one in question.

**Decisions of the Courts Regarding Syndicate Agreements Similar to the One in Question. The Doctrine of "Community of Interest" Considered.**

Clark *v.* Sidway, 142 U. S. 682.

"Persons who jointly purchase land to hold for a rise in value are not partners but tenants in common, and either party can sue the other at law for reimbursements of allowances made by him on the joint account, without there having first been a final settlement and the striking of a balance."

(Tenants in common. Community of interest).

Rothwell *v.* Dewees, 2 Black, 615.

"Where two devisees or tenants in common hold under an imperfect title, and one buys in the outstanding title, such purchase will enure to their

common benefit upon contribution made to repay the purchase money.

“ The rule is based upon a community of interest in a common title, creating such a relation of trust and confidence between parties, that it would be inequitable to permit one of them to do anything to the prejudice of the other in reference to the property so situated.”

Holbridge *v.* Gallipse, 2 J. Chan. 30.

Altman's Appeal, 98 Pa. St. 505.

The relationship of confidence and trust mutually existing between co-partners, co-tenants, and others having a community of interest in lands and property is elaborately discussed in Hare and Wallace Notes, White and Tudor's Leading Cases in Equity (4th American Edition, from 4th London Edition), Vol. 1, Part 1, p. 49 *et seq.*, in the case there cited of Keech *v.* Sanford. This case decided by Lord Chancellor King in 1726, held that an executor could not purchase for his own interest a leasehold estate belonging to the heir at public sale or otherwise; and the discussion of the doctrine involved in such decision is continued at great length, as applicable to all trust relationships arising from a common interest in lands, however held.

This case and notes thereof considers in detail this principle as applied to the relationship of executors, trustees, agents, co-partners, co-tenants, mortgagor and mortgagee, attorney and client, directors and officers of corporations and companies, shareholders and stockholders in corporations, joint stock companies and associations of all kinds where men have a *community of interest in lands, property, or enterprises*.

It is there declared (Keech *v.* Sanford, pp. 67, 68), citing the case of Lee and Graham *v.* Fox, 6 Dana, 171, 176:

“ Joint tenants and coparceners stand in such a

confidential relation in regard to one and another's interests, that one of them is not permitted in equity to acquire an interest in the property hostile to that of the other; and therefore, a purchase by joint tenant or coparcener, of an incumbrance on the joint estate, or an outstanding title to it, is held, at the election of his cotenants within a reasonable time, to enure to the equal benefit of all the tenants, upon condition that they will contribute their respective ratios of the consideration actually given."

*Greenlow v. King*, 3 Beav. 490.

In Bispham's Principles of Equity, 6th ed., pp. 143 *et seq.*, the doctrines above set forth are forcefully presented under the heading of "Constructive Trusts." Citing the case of *Keech v. Sanford* (*supra*) and saying of the same, "The general doctrine of this case is well established in the United States," he continues:

"The rule under discussion applies not only to persons standing in a direct fiduciary relation towards others—such as trustees, executors, attorneys and agents, but also to those who occupy any position out of which a similar duty ought in equity and good morals to arise. Thus it will be enforced against partners, tenants in common, \* \* \* This rule does not proceed on the ground of fraud, but because of public policy. \* \* \* No fraud may exist in point of fact; no fraud is presumed in law; but public propriety would be outraged if such acts were permitted, and hence their prohibition. When they do occur, the wrong inflicted is redressed through the medium of a constructive trust."

It is contended, therefore, in view of all the authorities hereinbefore cited, that appellee Jenner had no legal capacity to purchase the land in question for himself, or for himself and the three shareholders aforesaid, or for any combination of shareholders less than all of the same having a common interest in the land.

By granting the appellant's prayer, that the appellee Jenner in the purchase of the land in question be held to be a trustee for the benefit of the appellant and of all the other shareholders of the syndicate, it is evident that the rights of all the members thereof, including the rights of Jenner himself, will be protected and conserved; and that, on the other hand, if this court sustains the dismissal of the amended bill made by the court below, the rights of this appellant and of all the other members of the syndicate, save only the rights of Jenner and some of the three shareholders who signed with him the secret agreement (power of attorney, Exhibit No. 9, Rec. pp. 84, 85), will be swept away and destroyed.

### **Assignment of Error, Nos. 4, 5, 6 and 7.**

The appellant further contends that the sale of the land made to appellee Jenner, as shown by the evidence in this case, was the consummation of a secret, collusive, improper and unlawful agreement (power of attorney, Exhibit 9, Record pp. 84, 85) entered into by Jenner and three other members of the syndicate, shareholders, having a common interest in the land with the appellant and with all the members thereof.

All the circumstances attending the making of this agreement (power of attorney) show that it was designed to be a fraud upon the rights of the complainant, and of all the other shareholders not signers thereto.

The testimony of appellant Starkweather is that he was not informed of the existence of this agreement until long after the sale of the land, and then only by the proceedings in the suit of *Campbell v. Jenner* (Rec. p. 34). That he was never asked to join in the agreement when it was made, and was never asked to contribute his proportional share of the purchase money after the sale to preserve his interest in the property (Rec. p. 59).

The testimony of appellee Jenner shows that it was never intended to include the appellant in the benefits to be derived from this agreement (power of attorney), nor that any other shareholders should be a party or derive any benefit therefrom, except the signers thereto.

Jenner testifies, on direct examination (Rec. p. 99), concerning the purchase of the land at the second auction sale, "I became the purchaser, as trustee for myself and three others, who joined with me"; that "they were Robert G. Campbell, Ellis Spear, and E. Southard Parker."

He further testifies (Rec. p. 101):

"Q. State whether you had any other arrangement with any other members of the syndicate, other than this you have given, at that time you purchased the property under the deed of trust sale. A. None whatever.

"Q. Was there or not any understanding that you was to purchase this property and hold it for the benefit of the syndicate? A. There was no understanding whatever. I was to purchase this property for the benefit of myself and the three others whose names I have given, and for no other person or persons whatever."

This testimony of appellee Jenner does not sustain the allegations in his answer (Rec. pp. 10, 11) that "after he had made said purchase, certain of the shareholders came forward and asked to have an interest in the same; and to those who were willing to pay for the same he sold interests at the same proportionate price as paid by him; that he did not refuse an interest to any shareholder who was willing to pay for the same." On the contrary it proves that the purchase was made solely in pursuance of the terms of the secret agreement entered into by Jenner and the three shareholders, signers thereof.

This power of attorney (Rec. p. 84, Ex. 9), signed by appellee Jenner and the three shareholders mentioned, itself shows that an attempt was made to create a trusteeship in Jenner whereby he undertook for himself and the said three shareholders to buy in the land, the seven acres in question, advertised to be sold at auction to pay off the \$7,553.34 trust encumbrance, "for as small a sum as possible;" and thus, if possible, to extinguish all the right, title and interest of Starkweather and of all the other shareholders (save the three shareholders mentioned) for the sole and mutual profit of himself (Jenner) and the three shareholders signing the same, and at an inadequate price. It authorized the payment of \$21,000 for property which was thus bid in for \$17,100. It shows on its face the purpose and proof of fraud as affecting the rights of appellant Starkweather and of all the other shareholders not a party thereto.

In terms and effect it was an agreement to prevent competition at a sale at public auction, against the policy of the law, and fraudulent as against the interests of all the shareholders not a party to it, including the complainant Starkweather. This agreement was not a combination among buyers at a public sale whereby one person might buy for several others who otherwise would not be able to purchase the property; but it was a combination *to buy at the lowest possible price* so that appellee Jenner and three other shareholders might acquire the entire interest in the land and shut out thereby the interest and rights of the other shareholders in the same.

Concerning such agreements, in Story's Equity Jurisprudence, Vol. I, Sec. 293, discussing such sales under head of "Constructive Fraud," it is said:

"Upon analogous principles agreements whereby parties engage not to bid against each other at a

public auction, especially in cases where such auctions are directed or required by law, as in cases of sales of chattels or other property on execution, are held void, for they are unconscientious and against public policy, and have a tendency injuriously to affect the character and value of sales at public auction and to mislead private confidence. They operate virtually as a fraud upon the sale."

The same doctrine is discussed and reviewed *in extenso* in *Phippen v. Stickney*, 3 Mete. 387; in *Peck v. List*, 23 West Virginia, 336; and in *Cock v. Izard*, 7 Wall. 559, 562, the court said:

"The law will not tolerate any influence likely to prevent competition at a judicial sale, and it accords to every debtor the fair chance to a fair sale and a full price; and if he fails to get these, in consequence of the wrongful interference of another party, who had purchased his property at a price grossly disproportionate to its value, equity will step in and afford a redress, either by setting aside the proceedings under sale, or by holding the purchaser to account."

That these parties to said secret agreement were shareholders and co-tenants at date thereof and of the sale is not denied, and is testified to by Johnson (Rec. pp. 63-65).

**The Sale Was Not Necessary, and Was Invited by the Appellees Jenner, Croissant and Johnson.**

As has already been shown in the statement of the case in this brief, there was no necessity for this sale, but it was actually invited and urged by the appellees Jenner, Croissant and Johnson, and this makes the fraudulent character of the secret agreement and of the sale more manifest.

The debt and interest secured by this trust deed was due to one Thomas H. Gaither, of Baltimore, and the sale was made by trustees Duvall and Cole thereunder and by authority of written request received by them from said Gaither, bearing date October 12, 1897, asking them to advertise and sell the land because of "default having been made in the payment of *interest* on the note secured by said deed of trust due July 29, 1897" (Rec. p. 94) (the interest referred to at that time amounting only to about \$226). This fact also appears from the testimony of defendant Cole (Rec. p. 133), and by testimony of defendant Duvall (Rec. p. 139 and Rec. p. 141).

The written request to trustees Duvall and Cole in terms set forth only *default of interest*, not that the *principal* was due *or must be paid*.

Gaither's willingness to accept the interest merely and let the principal stand indefinitely as an investment appears conclusively established by the testimony of appellant Starkweather (Rec. pp. 28, 31, 32), and by the testimony of John C. Davidson, a witness for the appellant (Rec. p. 72), who testifies as follows:

"Q. Now, if you can recall, did the owner or holder of the note, Mr. Gaither, desire the collection of the principal of the note? A. I do not know that he ever demanded the principal. The note was repeatedly extended by us for some two or three times, I think, at the time of payment of interest.

"Q. And for whom was the note extended, do you recall? A. I could not say whether for Mr. Starkweather or Mr. Johnson; I know it was extended for Mr. Starkweather once, but after that I do not remember.

"Cross-examination by Mr. LEIGHTON:

"Q. I understand the principal of this note was overdue at the time of this sale. A. I think not; the principal was overdue, *but it had been extended by us on the back of the note, and was not due at the time of the sale.*"



***The Trustees Croissant and Johnson failed to make any effort to raise money to pay the trust encumbrance of \$7,553.34 or the interest thereon by assessment of the shareholders.***

The allegations of fraud as to this sale of the land and of the proceedings leading up to it are strengthened by the evidence showing the failure and neglect on part of the trustees Croissant and Johnson to make any assessment upon the members thereof for the purpose of paying the interest due upon the \$7,553.34 encumbrance. That the trustees failed to make any attempt to raise money to pay the interest in question is admitted by the answer of Croissant and Johnson (Rec. pp. 16-18) heretofore referred to, and by the answer of Jenner (Rec. p. 11).

The appellee Johnson was called and put upon the stand and examined as a witness in this case by the solicitors of the appellant, in the vain attempt to secure from him a statement of the financial affairs of the syndicate, showing the disposition of the shares thereof, the cash receipts coming into the hands of the trustees Croissant and Johnson, the disbursements thereof, and the books and accounts showing the same (see Rec. pp. 63-65). The following statement at the close of the direct examination of this witness on part of the appellant appears (Rec. p. 65):

" Mr. Leighton (solicitor for the defendants). We will call Mr. Johnson as our own witness and therefore waive cross-examination at this time."

But at no time subsequent, nor at any time during the taking of testimony in this case was Mr. Johnson produced or examined as a witness on the part of the appellees herein.

There is not a word in all of Mr. Johnson's testimony referred to that bears upon or substantiates the answer of

Johnson and Croissant, trustees, as to the impossibility of assessing the shareholders or of selling the shares to raise money to pay off the trust encumbrance or the interest thereon, or to show that as such trustees they (Johnson and Croissant) made any effort to raise money thereby to prevent the sale of the property, or that they did not collude and confederate with appellee Jenner, as alleged in the complainant's bill; no denial, in fact, by any testimony of their own of the collusion and fraud alleged in the bill against them.

Moreover, there is not in all the evidence in this case anything to show what funds came into the hands of Johnson and Croissant, trustees, by the sale, at any time, of syndicate shares or otherwise, or what disposition they made of the funds of the syndicate. And this silence on part of the defense follows and is continued through this case in spite of the allegation of the appellant's bill calling for an accounting in this regard (Rec. p. 8), and despite the repeated demands for the books of the syndicate showing the names of the shareholders and the prices paid therefor at any time (see Rec. pp. 26, 27, 32, 33). In this connection it appears by testimony of complainant Starkweather (Rec. p. 33) and by signed statement of Jenner (Ex. Rec. p. 242) that there was a "shortage" on part of said Croissant and Johnson.

The only assessment shown to have been made (Rec. 53, 54) was in 1901, *three years after this sale*, for the purpose of raising money for payment of costs which had been imposed upon these appellees (and Spear & Gross), personally, and their attorney's fees, etc., as defendants to appellant's bill in Equity 20,360 (Rec., Return to Certiorari), wherein the sale of the *Three-Acre* tract under a trust placed thereon for their own benefit was perpetually enjoined.

This assessment was also perpetually enjoined at instance of the appellant (Rec. p. 53).

In fact, the answer of the appellee Jenner (Rec. p. 11, par. 4) admits "that the trustees by general consent tacitly if not actually given, omitted to assess the shareholders as they were authorized to do."

That the sale had been agreed to as between appellees Jenner and Croissant and Johnson and invited by them is evidenced by the testimony of Davidson and Starkweather. The latter testifies (Rec. pp. 38, 39) that he heard in October, 1897, there was to be a sale of the land, and that he saw the advertisement of November 1, 1897, and

"went to Johnson to ascertain the reason for it and he informed me that he was not going to bother to pay any more interest; he was tired of paying interest—the semi-annual interest of \$226 and some cents."

And that he afterwards went to Baltimore and saw Mr. Thomas H. Gaither, the holder of the note,

"who stated that he greatly regretted it, that he did not want the money; that he wanted it to remain there but the trustees declared they would not pay any more interest, implored him to sell out, wanted to be sold out. He wanted the money to remain there as an investment, was more than satisfied with it, did not want to cause any dissatisfaction or loss to anybody; all he wanted was his interest. At my request Thomas H. Gaither gave me a writing requiring a postponement of the sale pending an adjustment of the question, which I brought over and delivered at the court-house here to trustee Cole and delay was given out of regard to the relation of the parties and afterwards an extension was given."

Here then we find the appellant endeavoring to prevent the sale and securing postponements thereof.

Appellant's witness Davidson, Mr. Gaither's agent in Washington, testifies (Rec. p. 73):

" Q. Prior to the sale of this property or alleged sale of this property, had you any conversation either with Croissant or Johnson or Jenner about this sale, or any desire on their part in connection therewith?

A. We repeatedly threatened sale for non-payment of interest and my recollection is that they paid interest several times and then refused on saying that they could not collect from some of the syndicate owners their share of the interest, and they would not pay it themselves; and said they had already put up a good deal of money on that account and would not put up any more, and that we could sell it so far as they were concerned.

" Q. Who was that conversation with? A. Mr. Johnson principally, and I think Mr. Jenner. I think they were both in the office at one time—at the time we were threatening to sell."

And here we find the appellees Jenner and Johnson assenting to the sale of Seven Acres of syndicate property, not endeavoring to arrange for a postponement or settlement; property worth at their own estimate in their secret agreement \$24,000 (as a small price)—*and the amount required to save it from sale only \$226.50.*

And the condition of the syndicate did not afford any reason for the sacrifice of its property.

From the admissions of appellee Johnson (Rec. p. 64), testimony of Starkweather (Rec. pp. 27-31) and subscription agreement (Rec. p. 83) and other testimony in the record we find that the syndicate was, or should have been, in better condition than when organized.

When organized the liens against the property of the syndicate were, Mindeleff trust, \$4,500; Jenner trust, \$2,500; Hull trust, \$3,000; Gaither trust, \$7,553; Bond lien, \$10,000; and Hubbard blanket trust lien of \$5,000.

At the time of the sale of the *Seven-Acre* tract to appellee Jenner there remained only the Gaither trust (under which sold) and the Hubbard trust lien, and neither of

these were pressing. The Bond lien of \$10,000 was satisfied by appellant Starkweather.

There was also claimed to be outstanding about \$2,200 indebtedness to Jenner, Campbell, *et al* (Rec. p. 240).

But there should have been in the hands of the trustees, the appellees Croissant and Johnson, upwards of \$8,000 of syndicate funds with which to have cared for all such demands.

There were outstanding 24 syndicate shares; eleven of which had been issued to appellant Starkweather on account of purchase, and the remainder sold at and above par value (\$2,500) by said trustees. All of these shares were subject to assessment and the parties were responsible.

Six of said shares were in the hands of the trustees (or so it appears) in reserve for emergencies.

So there was no justification here for permitting the sacrifice of the syndicate property for the benefit of the appellee Jenner.

### **Circumstances Attending the Sale.**

In the opening statement of the case, in this brief, it is mentioned that the appellant expended some \$1,600 at the sale of this property in his efforts to prevent it from passing out of the hands of the syndicate; the facts are as follows, and contain strong corroborative proof of the fraudulent and collusive character of the sale to appellee Jenner.

It is shown by the testimony and exhibits in this case that the land in question was first put up at auction by the trustees, Cole and Duvall, on November 13, 1897, and struck to one Ricker for \$24,100, he being the highest bidder therefor (Rec. p. 288), and that a deposit of \$1,000 was then paid down on the purchase, the money being furnished by appellant Starkweather, the real purchaser

at such sale; that Starkweather subsequently paid on such purchase two several sums of \$300 each, \$1,600 in all, but was unable to complete this purchase by payment of the balance of the \$24,100. It further appears that the said trustees thereupon again put up the land at auction on the 3d day of February, 1898, and that at such sale it was purchased by the defendant Jenner for the sum of \$17,100.

It is claimed on behalf of the appellant that the testimony shows that he, Starkweather, was, through his representative, a bidder at the auction sale and that his bid therefor was some \$24,100 or \$24,200, and that immediately preceding the last bid made by the representative of Starkweather the appellee Jenner made the next highest bid, "which was \$25 less"; and that a certain bond for one thousand dollars was tendered as security for the bid of the appellant, but the same was refused, and that the property was thereupon not knocked down to appellee Jenner in accordance with his said "next highest" bid, but was immediately re-cried again and finally struck down to appellee Jenner for \$17,100 (see testimony of appellant, Rec. pp. 56, 57, and Rec. pp. 156, 157).

The testimony of witnesses Gole, Duvall and Jenner as to the details of this last mentioned auction sale substantially bears out the contention made on part of the complainant regarding the circumstances of this sale.

Rec. pp. 139, 140; direct examination of defendant Duvall:

"Q. I understood you to say, Mr. Duvall, that after you declined to take stock that was offered you by the purchaser (being the \$1,000 bond offered by representative of complainant as security for the bid made for the property at \$24,100 or \$24,200), that the property was immediately re-cried. A. It was.

"Q. Do you know whether any bidders left between the time when you declined to take the stock and the auctioneer re-cried the property? A. None that I recall. *It did not consume more than two or three minutes.* I am confident that no one left.

"Q. Do you recall whether in the bidding among the different bidders there was such a difference in bidding as say, twenty-two to twenty-five thousand dollars, or whether the rise in bidding was gradual? A. I can only give my impression; I should say it was gradual" (Rec. p. 145).

It is a significant fact that this property should have been knocked down to appellant Jenner for \$17,100, when under the spur of appellant Starkweather's bids it had just been run up to over \$24,000, and *no one had left*; and also that at the previous sale, when Starkweather had it bid in, *some one* bid against him up to \$24,000 or over, and the bidding was gradual.

It would appear that the appellees Duvall and Cole, as trustees (who are nowhere in bill or testimony charged with being parties to the fraud and collusion of the other appellees) under these circumstances should have refused so low a bid, and have postponed the sale rather than have accepted it.

In *Gould, trustee, v. Chappell*, 42 Md. 473, the court, after quoting the rule in *Johnson v. Dorsey*, 7 Gill, 269, says:

"Where, however, the sale is made under a deed or will, and the trustee, as clothed with large discretionary powers in regard to the time, manner and terms of sale, such a sale being coupled with a trust, it is the duty of the trustee to bring the property to the hammer in a judicious and advantageous manner; and if he fails to exercise that caution and prudence which may fairly and reasonably be expected from a prudent owner in regard to the sale of his own property, and in consequence thereof the property is sold at a

depreciated price, a court of equity will not sanction such a sale, even though the conduct of the trustee be untainted with fraud and the purchaser be without fault."

Perry on Trusts, Sec. 770.

Under such widely differing bids no prudent owner would ever have accepted \$17,100 for his property. Would either one of the trustees have done so?

### **Assignment of Error Nos. 8 and 9.**

The value of the land and the inadequate sale price as affecting the question of fraud; and the sufficiency of evidence to prove fraud or collusion.

### **Value of the Seven Acres.**

The mute testimony of the secret agreement (power of attorney), Exhibit 9, Rec. p. 84, by and between appellee Jenner, and his associates, Spear, Parker and Campbell, all shareholders, shows beyond question what valuation *they, themselves*, placed upon the seven acres in suit—namely, \$24,000 as a "*low price*." In addition, taking as true appellee Jenner's reason given for this transaction—his fear of losing the money he had already invested—it must appear that he, Jenner, and his associates in the secret agreement, placed a much higher valuation upon the property than the \$24,000, or he and they could not have hoped to save their previous investments by purchasing at that figure.

The Record shows Jenner's previous investment as \$10,000; Spear, \$2,500; Parker, \$2,500, and Campbell, \$3,000; this total (less proportionate part for the three acres) must be taken—plus the agreed additional investment of \$24,000—to arrive at the true valuation of the seven acres they had in their minds when they made the secret agreement—about \$40,000.



The testimony of the real estate expert, FULTON R. GORBOX, as to value of this property at date he testified, February 10, 1904, is as follows (Rec. p. 66) :

"Q. Now what in your opinion is the value of the seven acres to which I have called your attention, per acre? A. Well, in dealing in real estate, our company, or myself either, would be willing to pay from five to six thousand dollars per acre for such ground to divide up in lots." \* \* \* (Rec. p. 67.) "I consider that a very reasonable market value; we do not buy unless at a very reasonable price.

"Q. In February, 1898, what, in your opinion, was the value of the seven-acre tract per acre? A. Well, I should say from three to four thousand dollars per acre."

Mr. Gordon also testifies under cross-examination that he had handled a large subdivision near this property, to the east of it; had paid \$3,200 and a fraction per acre, but that it was "not considered near as valuable as this" property. (Rec. p. 69).

This witness's testimony, therefore, places a value of about \$24,000 upon this seven acres in 1898, and about \$40,000 in 1904.

The appellant Starkweather showed what he thought of the value of the land by his bidding it up to \$24,500. It is therefore apparent that all the parties, including "secret trust," placed a valuation of at least \$24,000 on the seven acres. It is also evident that the purchase price of \$17,100, at which Jenner secured it at said sale, under said agreement in restraint of bidding, was grossly inadequate.

### **Character of Proof Required.**

Concerning the proof required to establish fraud, it is said in Story's Equity Jurisprudence (13th Ed.), Vol. 1,

section 190: "Courts of equity will grant relief upon grounds of fraud established by presumptive evidence, which courts of law would not deem sufficient to justify a verdict at law."

*Graffner v. Burgess*, 117 U. S. 186, 192. In this case there was a judicial sale of land at a gross inadequacy of price paid compared to the real value of the same. The court said:

"It is insisted that the proceedings were all conducted according to the forms of the law. Very likely some of the most atrocious frauds are committed in that way. Indeed, the greater the fraud intended, the more particular the parties to it often are to proceed according to the forms of law. \* \* \* From the cases here cited we may draw the general conclusion that, if the inadequacy of price is so gross as to shock the conscience, or *in addition to gross inadequacy, the purchaser has been guilty of any unfairness, or has taken any undue advantage of the owner of the property, or the party interested in it* has been for any other reason misled or surprised, then the sale will be regarded as fraudulent and void, or the party injured will be permitted to redeem the property sold. Gross inadequacy of price requires *only slight circumstances of unfairness in the conduct of the party benefited by the sale to raise the presumption of fraud.*"

In *Castle v. Bullard*, 23d Howard, 173, 187, the court said:

"Experience shows that the positive proof of fraudulent acts is not generally to be expected, and for that reason, among others, the law allows a resort to circumstances, as the means of ascertaining the truth."

In *Rea v. Missouri*, 17 Wall. 543:

"To establish fraud it is not necessary to prove it by direct and positive evidence. Circumstantial

evidence is not only sufficient, but in most cases it is the only proof that can be adduced."

In the case at bar there does appear much more than "only slight circumstances of unfairness in the conduct of the party benefited by the sale," as has been held by this court to raise the presumption of fraud.

The numerous acts of juggling with the syndicate property, heretofore recited, between appellees Jenner and Croissant and Johnson, trustees; the failure of said trustees to assess the shareholders for the payment of taxes, interest, etc., with the *facit consent* of said Jenner; the loaning of money by Jenner to said trustees Croissant and Johnson, and his joining with them in encumbering the *Three-Acre* tract for their joint benefit and attempting the sale of same, when he knew the said trustees were then short in their account with the syndicate; the inviting of the sale of the *Seven-Acre* tract, by both Jenner and said Croissant and Johnson; the permitting of the sale of such a valuable property for so small an amount of interest charge; and the secret trust between Jenner *et al* to purchase the property for their own benefit "for as small a sum as possible," and Jenner's purchase of the property at such a grossly inadequate price, appear to establish more than implied or constructive fraud in this case.

*And what is hidden may be inferred from what has been brought to light.*

And it should also be considered, that in not a single instance, in any of the suits between these parties referred to in and a part of this record, is it shown that any of the failures of the trustees to act, or any of their acceptances of loans from Jenner, and his friends, were authorized by any meeting of, or by any active participation of the shareholders at any time. The "*facit consent*" not to assess the shareholders shut the syndicate out of opportunity to

make attempts to raise by assessment the money needed to meet its obligations, and opened up the way for "loans" to it from said Jenner to the trustees.

All the doings of the trustees, Croissant and Johnson, and Jenner appear to have been a matter of "*tacit consent*," rather than to have been sanctioned by active or expressed consent and knowledge on the part of the other shareholders. And in no single instance does it appear that the appellant Starkweather was consulted or permitted to take part in their counsels.

The conduct of appellee Jenner throughout all his dealings with the syndicate, and his transactions with the trustees of the same, not only lacks the element of good faith, but shows positive proof of double dealing, concealment, and improper and inequitable attitude toward complainant Starkweather and nearly all the shareholders of the syndicate.

### **The Attitude of Appellant Starkweather.**

On the other hand the good faith of appellant Starkweather is apparent throughout all the record in this case. All the various suits brought by him concerning the land in question, including the one at bar, are part of the struggle he has maintained to preserve the property for the interest and benefit of all the stockholders, including that of the appellee Jenner himself. He opposed with all his energy and at personal cost to himself the alienation of the land by forced sale or otherwise. When he found sale of the *Seven-Acre* tract was threatened, for non-payment of interest, he secured postponement by visiting Gaither at Baltimore and the agent Davidson in this city. (See Rec., p. 39.) Then when he found that the trustees and Jenner were determined to let the property be sold, and were really inviting such

sale, and were doing nothing to avoid it, and that the changed conditions with the Hubbard trust people, brought about by appellee Jenner's visit to them added to the difficulty, he sought the advice of counsel, and was advised (Rec. p. 62), "Your way to do is to bid that in through a third party that you can trust, then you will hold a whip hand over them and not be dictated to as you have been heretofore."

The bids of Starkweather at the first and second auction sale, and his payments of \$1,600 cash were made for the benefit of all the shareholders, and he himself testified (Rec. p. 62): "I knew distinctly that I could not do anything but justice. I knew a court in equity would force me to treat with equality each member of the syndicate"; and that it was his intention to hold the property for the benefit of the syndicate should he secure it. His desire and intention was to prevent the land being sold at a low price to strangers, to save it and keep its control for the syndicate; to protect the rights of all the shareholders, including the rights of appellee Jenner himself and of the three other shareholders who at that very time were in secret collusion against him and against the other shareholders, in spite of the bad faith manifested by Jenner and the trustees in failing to do all in their power to prevent the sale of the same.

The absolute good faith and honor of appellant Starkweather are shown beyond question by the testimony in this case, almost to a Quixotic degree.

Of his own volition, without suggestion or knowledge of Stephen A. Hubbard, he secures by a blanket trust upon all his properties (Rec. pp. 50, 152), money advanced him by Hubbard (a life-long friend) without any security whatever (Rec. pp. 50, 199); and in recognition of this fact, Hubbard deposits the note with several deeds of release, in blank, with the trustees with instruc-

tions to release anything that Starkweather may want released without any money payment whatever (Rec. p. 185); the suggestion of \$5,000 lien, of said trust, upon this (syndicate) property was Starkweather's (Rec. pp. 35, 152). The unforeseen death of his friend Hubbard, and non-action of syndicate trustees (Rec. pp. 36, 51, 160), interposition of attorneys for the estate, and visits of Jenner, Croissant and Johnson to the Hubbard people (Rec. pp. 51, 153) caused all the trouble and difficulty with the Hubbard estate claim.

The Mindeleff transaction (Rec. pp. 29, 163), in which Starkweather paid over \$1,500, because of an agreement that Mindeleff did not perform and out of which Starkweather received nothing; the testimony of Reinhol (Rec. pp. 186, 187) and Bond (Rec. p. 176); his purchase of one syndicate share from Baker at \$2,650 cash (Rec. pp. 189-192), and Baker's continued friendly attitude under changed conditions (Rec. p. 49); his offer to take Jenner's shares off his hands at par (Rec. pp. 147-154) and Jenner's own admission that Starkweather had paid him in full of all demands (Rec. p. 114), taken together with all the facts as shown by the testimony, constitutes unquestionable proof of appellant Starkweather's sincerity and sterling honesty, amid a maddening turmoil of financial difficulty and ingenuous interested misrepresentation.

The only substantial claim of misrepresentation and bad faith made against appellant Starkweather, is with respect to his statement that the heir of the Hubbard trust could be satisfied by payment of \$5,000; this is, in fact, all that appellee Jenner adheres to upon cross-examination (Rec. pp. 169-170). Starkweather's good faith in this representation is fully substantiated by Exhibit 11, Record, p. 87, which reads as follows:

" 791 Asylum Ave., Hartford, Conn.

" DEAR FRIEND:

" I have been to see Mr. B. and he has sent instructions to Mr. Wright, the trustee, in regard to releasing the Crescent Heights or Sanitarium property, to you, on the payment of five thousand dollars. I earnestly hope you will be able to complete the arrangement and by doing so, we can make a beginning of closing up this long continued business.

" Yours as ever,

" E. B. HUBBARD.

" Monday evening, December 9th, 1895."

Record, pages 36, 51, 152 and 160, also show long prior attempts, upon Starkweather's part, to get the trustees to pay the \$5,000 and secure the release. This trust is no longer a lien upon the seven acres in question, by reason of foreclosure under the first trust, and sale to Jenner, which released the title from charge of the second trust.

He is also charged with having over-reached the purchasers for the syndicate, in getting a high price for his land (or rather a high promise).

As they were practical real estate men and hard-headed mature men of business, and he (appellant Starkweather) was a literary man, translator, author, inventor, missionary and a beginner in real estate business (Rec. pp. 217-220), this charge falls of its own weight.

The only question of any moment is as to his good faith in his bidding, by proxy, at the sale and re-sale of the *seven-acre* tract.

The clear and sufficient answer to that is that he was forced by misconduct of the appellees into a position where he was justified by every consideration of right and equity to protect his rights, which were being attacked and about to be swept away by the acts of the appellees.

If ever a party can come within the rule laid down in

*Twin Lick Oil Co. v. Marbury*, 91 U. S. 587, the appellant is that party, even though he were acting exclusively in his own behalf, and not for the benefit of the syndicate *as he surrears he was acting*.

The cases of the *Twin Lick Oil Co. v. Marbury*, 91 U. S. 587; *Allen v. Gillette*, 127 U. S. 589; and *Pewabic Mining Co. v. Mason*, 143 U. S. 349; were cited in behalf of appellees in the court below; but a careful reading of said cases shows that they are not analogous cases, and even eliminating the element of fraud and collusion which exists in this case at bar, they do not in anywise support the contention of the appellees herein.

### Conclusion.

It is admitted that it would not be feasible to set aside the sale itself, made to appellee Jenner by trustees Cole and Duvall; but it is submitted, that the alternative prayer of the bill should be granted, in all equity and justice. The rights and equities of all—appellant, appellees, Campbell's heirs, and other shareholders—will be preserved and maintained—no one or more will benefit at expense and injury of all the others.

Appellee Jenner, as trustee for all the shareholders, will be entitled to receive back, under direction of the court, all moneys he has expended upon the common property, and the trustees of the syndicate can assess the shareholders (including Jenner and Starkweather for their *pro rata*) and enforce payment as provided for in the syndicate certificate, if found necessary; but the restored value of the syndicate shares will unquestionably make every shareholder more than willing to pay his *pro rata* without assessment.

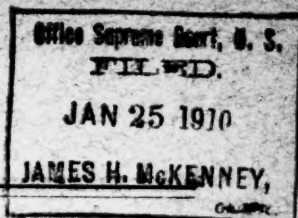
Undoubtedly the reserved six shares could be sold under the new conditions for enough to pay off Jenner's claim under the accounting prayed for in the bill.



The safety and stability of our business and social institutions lies not merely in the command "Thou shalt not steal," but more especially depends upon the implied injunction to rigidly uphold the confidences of fiduciary responsibility, capacity and duty. In these days, when, so often, the public faith in private and corporate honesty is shaken, there yet remains the resource of courts wherein are enforced the strict obligations of equity and good faith; and it is with confidence in this tribunal that this case is presented.

It is respectfully submitted, that under the facts of this case and the law applicable thereto, the judgment of the court below should be reversed, and judgment rendered in accord with the alternative prayer of the appellant's petition.

RICHARD P. EVANS,  
*Attorney for Appellant.*



IN THE  
**Supreme Court of the United States.**

OCTOBER TERM, 1909.

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No. 114.

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GEORGE B. STARKWEATHER, APPELLANT,

*vs.*

HERBERT W. T. JENNER, JOHN D. CROISSANT,  
JOHN O. JOHNSON, ANDREW B. DUVALL, AND  
CHARLES C. COLE.

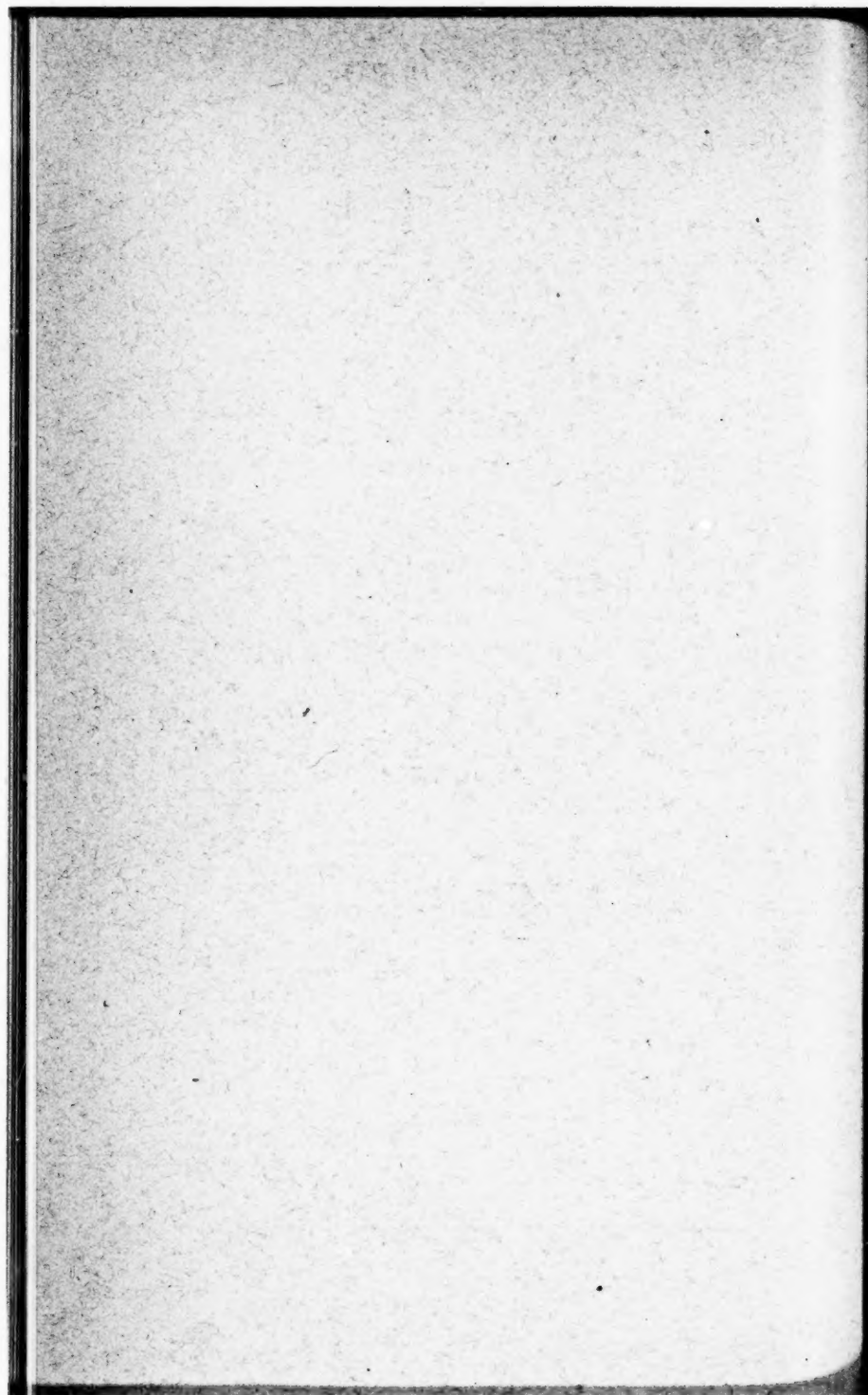
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**BRIEF FOR APPELLEES.**

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B. F. LEIGHTON,  
*Attorney for Appellee Jenner.*

R. GOLDEN DONALDSON,  
*Attorney for Johnson and Croissant, Trustees,  
and Cole and Duvall, Trustees.*



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**Statement of the Case.**

This is an appeal from a judgment of the Court of Appeals of the District of Columbia, affirming a decree in equity passed by the Supreme Court of the District of Columbia on the 16th day of November, 1904, dismissing complainant's bill. The bill was filed by the appellant, George B. Starkweather, to set aside a sale made by the appellees, Andrew B. Duvall and Charles C. Cole, trustees under a deed of trust, to the appellee Jenner; or, in the alternative, to decree that Jenner holds title to the property purchased by him for the benefit of appellant and other persons members of a syndicate which before such sale owned the land. The bill averred

a conspiracy and an illegal contract entered into by the appellee Jenner and others to defraud said appellant of his interest in said land. The land embraced in said trust, which is the subject of this controversy, contains seven acres, part of a tract of ten acres, owned by said syndicate.

The material facts necessary to give a proper understanding of the case are, that the appellant Starkweather was the owner of the property in question, which was contiguous to, and part of, an adjoining piece of land, said two parcels comprising ten acres in all. In the spring of 1892 he conveyed said properties to the appellees Johnson and Croissant, as trustees of a syndicate which had been formed to purchase the property. The total purchase price was to be \$75,000 for the ten acres. There were to be thirty shares or certificates, each of the value of \$2,500. At the time the appellant made the contract with appellees Johnson and Croissant to convey them the property, it was subject to certain other deeds of trust, aggregating about the sum of \$39,113.34 (Rec., p. 27). The precise amount does not appear from the record. The encumbrances upon the property consisted of several separate deeds of trust. One of the deeds of trust, which was executed by the appellant Starkweather and his wife, conveyed the property in controversy to Charles C. Cole and Andrew B. Duvall, as trustees, to secure the payment of a note in the sum of \$7,553.34, made payable to one Gaither, four years after date, with interest.

There was a default in the payment of the interest due upon said deed of trust note, and also in the payment of taxes against said property, on account of which said Gaither, holder of the note, instructed and directed the said Cole and Duvall, trustees, in writing to sell said property under the terms of the deed of trust (Rec., p. 91).

Pursuant to the order of Gaither, Cole and Duvall,

trustees, advertised the property for sale in November, 1897. Upon the day of sale the auctioneer cried the property, and there was considerable bidding, and finally it was knocked down to one George E. Ricker, he being the highest bidder. Ricker caused to be paid to the trustees the deposit required by the terms of sale, but he did not further comply with said terms by paying the balance of the purchase-money or giving notes. In buying said property, Ricker acted as the agent and under the instruction and by the direction of the appellant Starkweather (Rec., p. 140), and after the sale and the placing of the deposit he assigned his rights under said sale to Starkweather (Rec., p. 142).

The trustees postponed the time, within which the sale should be consummated, on two occasions at the request of said Starkweather and Ricker, Starkweather himself paying on each occasion to the trustees the sum of \$300 to secure said postponement (Rec., pp. 135 and 142). Finally, neither Starkweather nor Ricker complying with the terms of sale, the trustees notified them in writing (Rec., pp. 147 and 148) that the property would have to be resold, and the trustees readvertised said property for sale accordingly, when a bill in equity was filed in the Supreme Court of the District of Columbia, in the name of George E. Ricker against said trustees (being Equity Cause 18,969) to restrain said sale, on the ground that because of certain tax entanglements against the property the trustees could not convey title. A restraining order was issued upon *ex parte* application, but the trustees filed answer to this bill, and upon hearing said restraining order was dismissed, and thereafter, on the 3d day of February, 1898, after the required advertisement, the trustees again exposed said property for sale under the terms of said deed of trust (testimony of Cole, Rec., pp. 132 and 133, and testimony of Duvall,

Rec., pp. 139 and 142). At said last mentioned sale Starkweather's agent, Silver, was a bidder in competition to the appellee Jenner and others. Starkweather's said agent bid upon the property until all other bidders ceased, when it was knocked down to him, but when Starkweather undertook to make the deposit required by the advertisement, he could not offer money, but offered certain certificates of stock in a cemetery organization, located in Maryland, in the sum of \$1,000, which the trustees declined to accept (testimony of Duvall, Rec., pp. 139 and 140, and Rec., pp. 46-47), and, after a consultation between the auctioneer and the trustees Cole and Duvall, the property was immediately recricd before the bidders left the premises (Rec., p. 145), and at the recricd sale was sold to the appellee Jenner for the sum of \$17,100, Jenner making the required deposit, and thereafter in all respects complying with the terms of sale; the property was accordingly thereafter deeded to him by said trustees. It is this sale that Starkweather now seeks to invalidate.

The proceeds of the sale by the trustees Cole and Duvall were disbursed under the direction of the Supreme Court of the District of Columbia, in an equity cause therein pending, entitled *Elizabeth B. Hubbard vs. A. B. Duvall et al.*, Equity No. 19,856. Mrs. Hubbard was the owner of a note of Starkweather's secured by a subsequent deed of trust upon the same property, and the records and proceedings in that cause were introduced in evidence and made a part of this cause (Rec., p. 279 et seq.) By the auditor's report in that case the proceeds of this sale were disbursed, and said auditor's report was finally confirmed, and the trustees fully disbursed the money according thereto. The report of the auditor is contained on page 291 et seq. of the record in this case.

Starkweather, in his original and amended bills filed

in the case at bar, charges that an unlawful conspiracy was entered into by the appellees, Johnson, Croissant; Jenner, and other members of the syndicate, to defraud him, Starkweather, out of his interest in the property, first, by declining to pay the interest due on the Gaither trust, so as to expose the property to public sale, secondly, by combining and agreeing not to bid against each other in the bidding of the property at said sale; and thirdly, to buy in the said property at a reduced price, and thus freeze out and defraud said Starkweather.

It would be useless and unnecessary to rehearse the whole record in respect to these charges, as much immaterial, irrelevant, and wholly useless matter was put in the record by appellant, and we content ourselves by declaring that absolutely not a syllable of testimony in the case was introduced which in any manner tends to prove that any unlawful combination or confederation was undertaken against Starkweather, or any one else.

It is admitted, however, by the appellee Jenner, that, after Starkweather and Ricker failed to comply with the terms of the first sale to them and the property had been again advertised for sale, he and several other members of the syndicate entered into an arrangement by which they agreed to be present at the sale and buy in the property for the purpose of protecting their own individual interests, and that accordingly those interested with him executed and delivered to him a power of attorney to buy in said property for his and their joint benefit, and that, in pursuance thereof, he did attend said sale and buy said property. That, after Starkweather outbid every one else, even at this second sale, but wholly failed to comply with the terms, the property was recried, and he, Jenner, then purchased it for \$17,100, as heretofore stated, and fully complied with the terms of sale and received a deed from the trustees thereof.



## ARGUMENT.

### Relief Prayed for in the Bill.

The material relief prayed for in the bill is twofold:

1. That the sale by Cole and Duvall, trustees, be set aside and for naught held; or,

2. That Jenner be decreed to hold the title to the property as trustee for all the members of the original syndicate, including Starkweather.

There is also a prayer for an accounting from Jenner; but that need not be considered, as it is necessarily dependent upon the foregoing prayers.

Obviously the first relief can not be granted. The owner of the trust note, and others who received and were entitled to the proceeds of sale, are not parties to this proceeding, and these proceeds could not be restored to Jenner.

Further, that feature of the case is now *res adjudicata*, because all the proceeds of the sale were distributed by the court, as shown by the auditor's report (Rec., p. 291, et seq.) in the case of *Hubbard vs. Duvall et al.*, heretofore referred to, in which all persons interested in said proceeds were parties: Johnson and Croissant, as trustees of the syndicate and representing the interests of all members thereof (including Starkweather) were parties, and the decree in that case is final and binding upon them all.

The second relief prayed for can not be granted unless it can be shown that Jenner entered into some conspiracy or other unlawful consideration to defraud Starkweather in relation to the property. The record discloses not a vestige of evidence upon which any

reasonable mind could conclude that any such conspiracy or confederation ever existed.

Let us examine the testimony offered by Starkweather to prove his allegation of fraud.

We are compelled to do this because appellant has incorporated so much of the evidence in his brief.

In support of his bill, appellant Starkweather produced eight witnesses, the testimony of none of whom throws any light upon the alleged conspiracy which he charges against Jenner. These witnesses were:

**John O. Johnson**, whose testimony relates solely to the form of syndicate certificate used by the syndicate; the price of the same; the fact that Johnson and Croissant received each one certificate as commissions (Rec., pp. 63, 64, and 65).

**Fulton R. Gordon**, whose testimony relates solely to the value of the ground (Rec., p. 66).

He also testified that in February, 1898 (the date of the sale to Jenner), the property was worth from \$3,000 to \$4,000 per acre (Rec., p. 67), but upon cross-examination, it was shown that he was not familiar with the lay of the ground. He could not tell where it fronted.

**John C. Davidson** testifies that he was the agent of Thomas H. Gaither and loaned the money which was secured by the deed of trust, in which Cole and Duvall were trustees; that there was a default in the payment of interest, which resulted in the sale; that he had repeatedly threatened sale for prior nonpayments of interest (Rec., pp. 71 and 72).

**Samuel R. Bond**, who seems to have been produced by the appellant for the purpose of showing that in his (the witness') opinion, the appellant's reputation for veracity was good. The testimony of the witness in this regard is as follows:

"A. Mr. Starkweather seemed to be a very sanguine man, often promising what he afterwards

was not able to perform. I never knew any instance that indicated a lack of veracity on his part in any manner.

"Q. In any of his dealings with you; with respect to transactions, did you ever know him to make any fraudulent representations respecting the matters that you had with him?"

"A. Not that I *discovered* to be fraudulent." (Rec., p. 175.)

Witness had but two transactions with Starkweather, one in which Starkweather became a purchaser from Mr. Bond at a public sale in foreclosing a mortgage, and the other where Mr. Bond, as an attorney, held certain notes for collection against Mr. Starkweather (Rec., p. 175).

**James A. Collins**, the gist of whose testimony is that he attended the first sale of the property made by Cole and Duvall, trustees, in November, 1897, as Mr. Starkweather's agent, and that he bid it in for Starkweather and made the deposit of \$1,000. That he was not present at the second sale. That he had no interest in the purchase. That he did it as a friendly act for Starkweather. That he did not know anybody in the transaction but Starkweather (Rec., pp. 177-178).

He further testified that at this sale there were quite a number of bids. That the bidding commenced at a small figure and ran up (Rec., p. 179).

**Stephen H. Starkweather**, a son of the appellant, who testified that he was present at the first sale in November. There were not many persons present, not over a dozen. That he was not present at the second sale in February. That it was he who delivered the \$1,000 to Mr. Collins for his father at the November sale (Rec., pp. 180-1).

**David C. Reinohl**, who testifies that he had been loaning Starkweather various sums of money at different times for the past twenty years, in sums ranging from \$25 to \$100 (Rec., p. 187).

This testimony was apparently put in for the purpose of showing Starkweather's integrity. It is wholly immaterial.

The same witness also testified to certain transactions which he had for the Hubbard estate in relation to releasing the blanket deed of trust which the Hubbard estate held against the ten-acre tract and other property standing in the name of Starkweather (Rec., p. 185), and lastly,

**Charles A. Baker**, who testified that he held a share of stock in the syndicate and sold it to Starkweather in 1894, and about conversations held with Jenner touching the syndicate property, which he was unable to recall (Rec., pp. 189-190).

This witness also testified (Rec., p. 190) that Jenner suggested that he (Baker) should get the title to some shares which he (the witness) held as trustee, for the reason that his (witness') position and personal interest in the syndicate would be more helpful than that of Starkweather (Rec., p. 190).

This does not show that Mr. Jenner was trying to get Mr. Starkweather's interest for himself.

Witness further testified to taking four shares of Starkweather's stock in the syndicate to secure his firm's indorsement of Starkweather's paper at the bank in the sum of \$4,000, and that the bank subsequently got judgment on the note against Starkweather. Starkweather has not paid the money yet (Rec., p. 191). Witness paid the judgment and took an assignment of the judgment against Starkweather to himself, and still holds it. Starkweather paid him for his indorsement (Rec., p. 192).

It will be observed that none of the testimony of any of these witnesses is at all relevant, and does not bear upon the real questions at issue. This leaves only the testimony of the appellant, Starkweather himself, to

prove his charges of fraud against Jenner, Johnson, and Croissant, and against the fairness and bona fides of the sale by Cole and Duvall, trustees under the deed of trust.

The testimony of Starkweather is a hopeless mass of irrelevant, immaterial, and in many instances, nonsensical, utterances. The gist of his testimony is as follows:

On May 2, 1892, Starkweather agreed in writing to sell the property in controversy to Jenner and Croissant, trustees for syndicate (Rec., p. 20).

The trustees were to make a deposit of \$1,000. Mr. Blair Lee held a trust on the property, and he had advertised it for sale, and was going to sell it at auction on the following Monday morning, and Johnson and Croissant went to his office and notified him that they had bought the Starkweather property, and that they would give him the \$1,000 deposit, if he would not make sale (Rec., p. 21).

See copy of letter to Blair Lee (Rec., p. 78).

The auction sale did not occur. A modified agreement, dated May 27, 1892, was made by Johnson and Croissant, trustees, with Starkweather, and in pursuance of this last agreement Starkweather on June 1, 1892, conveyed the property in question to Johnson and Croissant, trustees (Rec., p. 24).

When the trustees had the title examined they found five deeds of trust against it: a blanket trust of \$14,560, on this and other property; one for \$7,553.34, in which Cole and Duvall were trustees; one held by Jenner for \$2,500, a trust in favor of Mendelevff of \$4,500, and one of \$3,000 to Hull, in addition to which there was a lien of \$10,000 against part of the property. This is admitted by Starkweather in his evidence (Rec., p. 27).

Jenner agreed to and did accept one of the certificates in the syndicate of the face value of \$2,500 for his deed

of trust in that amount (Rec., p. 28), thereby giving up better security to help Starkweather.

Johnson and Croissant, trustees, out of the funds in their hands bought the \$4,500 trust and the \$3,000 trust (Rec., p. 29). The trust for \$7,553.34 was foreclosed by Cole and Duvall, and the property sold to Jenner at the trustees' sale on February 23, 1898, and the proceeds of sale distributed by the court, including a pro rata distribution to the holders of the trust of \$14,560 (Rec., pp. 28 and 29).

Ten thousand dollars in cash was paid Starkweather by Johnson and Croissant, trustees, on August 4, 1892. He also received eleven certificates in the syndicate, and the trustees paid some judgments against him.

The trustees, Johnson and Croissant, paid out certain sums to acquire the holdings in the property of colored people at the rate of 34 cents per foot (Rec., p. 32).

Prior to July 29, 1897, Starkweather had no knowledge of the trustees levying assessments on the certificates. Trustees met the payment of interest by making loans personally or as trustees, at the bank. In 1899, trustees tried to levy an assessment on the certificates, but were enjoined by court (Rec., p. 32).

Starkweather was told how much was paid on account of subscriptions to the certificates in the syndicate. Says it interested him very little. Appellee, John O. Johnson, was entirely frank with him in the matter (Rec., pp. 32-33). Introduces power of attorney from R. G. Campbell, Gen. Ellis Spear, and E. Southard Parker, to the appellee Jenner, which Starkweather in his evidence, terms "tangible evidence of collusion" (Rec., p. 34).

See power of attorney (Exhibit No. 9, Rec., p. 84).

The beneficiary under the blanket trust of \$14,560, was willing to release the trust as to this property for \$5,000 (Rec., p. 34). That, in his judgment, the property

in 1892 was a bargain at \$75,000 (Rec., p. 37), and that its tendency has been upwards since the sale (Rec., p. 38).

Mr. Gaither, the holder of the trust, gave Starkweather a note to the trustees, Cole and Duvall, to postpone the sale, because he did not want to see anybody lose anything. Two extensions were granted (Rec., p. 42).

He bought the property with the Gaither trust on it; did not pay the note; the holder notified Cole and Duvall to sell. He learned of the sale on November 1, 1897. The sale was to take place November 13, 1897.

A fair example of the character of the man and his evidence is contained in his cross-examination on pages 43 to 47 of the record. He evades all direct questions, answers none concisely and intelligently, charges everybody with dishonesty and fraud, and explains that he is not on friendly terms with the members of the syndicate, and intimates that he is the only honest man in the crowd. Through all of this testimony there is a total lack of honest frankness, and his conduct is entirely at variance with fair dealing.

Starkweather had eleven certificates—two went to Croissant and Johnson, for commissions in selling the property, two for lots to Jenner, leaving him seven (Rec., p. 47). Three of them he transferred to Mr. Richard G. Campbell, for a loan of \$1,000 each, and the other four to Yerkes and Baker as collateral (Rec., p. 48). Starkweather admits that he got out of the property \$10,000 from the trustees, \$3,000 from Campbell, and what he borrowed from Yerkes and Baker (Rec., p. 52). This is in addition to the judgments which the trustees paid against him on the dockets of the Supreme Court of the District of Columbia (Rec., p. 53).

The deposit I offered the trustees at the sale—

“was one of my own certificates of the Forrest Lake Cemetery in Prince George’s County, Mary-

land (Rec., p. 59). I did not bid at the recried sale. I had nothing to sustain my bid. It was finally struck down to Jenner (Rec., p. 60). Had ten days' notice of the second sale. Went to New York to try to raise money on the cemetery stock. Was unsuccessful. Knew it was not negotiable here (Rec., p. 61). Did not confer with any members of the syndicate of my intention to be a bidder at the sale (Rec., p. 62). I bid under advice of my attorney, who said to me, "your way to do is to bid that in through a third party whom you can trust, then you will hold a whip-hand over them, and not be dictated to, as you have been heretofore" (Rec., p. 62).

(thus showing an intention on the part of Starkweather to do just what he is trying to charge Jenner with having done, namely, securing an undue advantage over the other members of the syndicate). His explanation of what affected the marketability of his graveyard stock, contained on page 71, of the record, is very amusing.

Starkweather put an acknowledgment on the bottom of a letter sent him by Mrs. Hubbard's agent and recorded it without the agent's knowledge, to affect the title to the property (Rec., p. 202).

Mrs. Hubbard, in her answer to the suit of Starkweather against her, known as Equity No. 17,246, denies she ever authorized any person to enter into the agreement which Starkweather made out of the letter he recorded (Rec., pp. 203-4). Starkweather says Mrs. Hubbard says she did not know what she was swearing to when she made the statement (Rec., p. 204).

In the habit of attending auction sales, and when property was struck down to him offering something in lieu of cash as deposit (Rec., p. 209). Can not recollect of any case where Jenner urged his creditors to foreclose. Jenner never attended any of his sales, except in the case of property he was interested in (Rec., p. 211).



"Always had an unconquerable aversion to business." Specialty is authorships and inventions. "Invented about forty things." Flying machine was one; also been amateur preacher; also a missionary; the author of several books (Rec., pp. 212-13). Admits he is the author of two pamphlets containing certain eulogistic statements regarding the Forrest Lake Cemetery in Maryland (Rec., p. 213).

To refute this irrelevant and very unstable testimony in behalf of the appellant Starkweather, the appellees have the testimony of Charles C. Cole and Andrew B. Duvall, trustees, both of whom testified that Starkweather executed the deed of trust to them to secure the note to Gaither (this was before Starkweather conveyed the property to the syndicate). That thereafter there was a default in the payment of the interest, and that under the written instructions of Gaither, the holder of the note, they foreclosed the deed of trust by making the first sale in November, 1897, to Starkweather's agent (Rec., p. 132). That the sale was made after lively competitive bidding and was fair and honest in all respects. That Starkweather caused the deposit of \$1,000 to be made at the time of the sale, and afterwards on two occasions paid \$300 to the trustees to extend the time within which to comply, and afterwards, upon his utter failure to comply, the trustees resold the property in February, 1898 (Rec., pp. 132 and 133). At this second sale Starkweather again undertook to be a bidder and ran the property up, but he was unable to make the deposit required by the terms of sale in money, and offered the trustees stock in a certain graveyard, which they declined to accept, and immediately, before any of the bidders or any of the parties left the premises, they caused the auctioneer to recry the sale, and at that time sold it to Jenner (Testimony of Duvall, Rec., p. 139).

Subsequently Mr. Hubbard, who was the owner of the blanket trust hereinbefore referred to and which was subsequent in point of time to the Gaither trust, filed a suit, so that the proceeds of this sale to Jenner might be distributed under the direction of the equity court (testimony of Cole, Rec., p. 134). To this suit of Mrs. Hubbard, all the persons interested were parties, including the trustees, Croissant and Johnson, who were made parties because they were trustees representing the entire syndicate, of which Starkweather was one (Rec., p. 279).

That these proceeds were distributed subject to the order of the equity court, and the report of the auditor making the distribution was finally confirmed by the court, from which final order no appeal was ever taken, so that it is binding upon all the parties (see auditor's report distributing proceeds of sale, Rec., p. 291, and order confirming same, Rec., p. 297).

The defendant, Herbert W. T. Jenner, testified that he was present at the sale of the seven-acre tract made by the trustees, Duvall and Cole, in November, 1897; he was not a bidder at that sale. Was not interested in the purchase made by Starkweather; was not consulted by Starkweather in respect to the propriety of purchasing (Rec., p. 95).

At the time of this sale he had invested about \$10,000 in the syndicate. Starkweather did not comply with the terms of his purchase, and the trustees, Duvall and Cole, in February, 1898, again offered the property for sale; witness was present at the sale, and became the purchaser, with three others, who joined with him. They were Robert G. Campbell, Ellis Spear, and E. Southard Parker. Witness was the highest bidder; there were many persons present, many of them unknown to witness; there were other bidders; Starkweather was present (Rec., p. 99). There was no arrangement between himself and the trustees, Duvall and Cole, in regard to his

purchasing the property, nor was there any agreement or understanding with the trustees of the syndicate, as stated in complainant's bill. The only understanding and agreement witness had was that contained in the power of attorney, of which a copy is filed in this suit. This power of attorney was with Robert G. Campbell, Ellis Spear, and E. Southard Parker, and was entered into after the first sale of the seven-acre tract, which broke up and brought to an end the syndicate, so far as the seven acres were concerned (Rec., p. 100).

The power of attorney to which witness referred is found on page 250 of the record, and is in the following language, to wit:

"WASHINGTON, D. C., Dec. 14, 1897.

"We, the undersigned, hereby appoint Herbert W. T. Jenner, trustee, of Washington, D. C., our attorney in fact, to bid for us at an auction resale of about seven acres of land near Washington, D. C., to take place on Dec. 16, 1897, under a deed of trust recorded in liber 1365, folio 248, et seq., or any postponement of said resale, or subsequent resale, to bid in the property for as small a sum as possible, the outside limit to be twenty-four thousand dollars (\$24,000).

"And we hereby agree to pay Mr. Jenner our proportionate shares of the total cost and expense of the tax deeds on said property already obtained by him, and we agree to pay our proportionate shares of the deposit money on the day of sale, and the balance of the purchase money within the period and on the terms set forth in the advertisement under which the sale is made, our said proportionate interests or shares to be as stated below, under our respective signatures,

(Signed) "R. G. CAMPBELL, one-fourth interest,

"ELLIS SPEAR, one-tenth interest,

"E. S. PARKER, one-eighth interest,

"HERBERT W. T. JENNER, remainder of interest."

There was no understanding whatever that he was to purchase the property and hold it for the benefit of the syndicate; he was to purchase it for the benefit of himself and the three others whose names were given, and no other person or persons. Mr. Campbell failed to pay any part of his deposit money and failed to settle up within the time allowed, and received no interest in consequence. He was urged by witness to do so, but was not willing (Rec., p. 101).

In his cross-examination witness testified that he had bid personally for the property. As he recollected, the property was struck off to Starkweather, or some one representing him, for \$24,500; that witness was a bidder prior to its being knocked down to Starkweather; does not recollect the amount of his bid. The party who made the highest bid was unable to put up the deposit money. He, and the parties he represented, had agreed upon the highest bid that was to be made for the property (Rec., p. 123).

The party first bidding, not being able to put up the required deposit, the property was recried at once. Pending the recrying of the sale, he had no conference or consultation with the trustees. Saw the trustees, or one of them, Mr. Duvall, talking to the auctioneer. There was a crowd of people round them; could not tell who took part in the conversation. Witness said nothing to the auctioneer; had no conversation with the auctioneer or Mr. Duvall (Rec., p. 124).

Mr. Johnson was in the crowd. Does not remember seeing him at the time Mr. Duvall and the auctioneer were talking together. There was quite a crowd of people there, many of whom witness had never seen before; a number of them bid on the property; did not know who bid and who did not; did not know Ricker, who represented Starkweather. Mr. Wright, Jr., the attorney for Mrs. Hubbard, was bidding (Rec., p. 125).

This is the only evidence of this witness bearing directly on the sale of February, 1898.

It is respectfully submitted that the evidence establishes beyond a reasonable doubt the fairness of the sale, and negatives all imputations of fraud or collusion on the part of the defendant Jenner and his associates in connection with the purchase of said property. The charge of fraud and wrongdoing in connection with the affairs of the syndicate, and especially in connection with the sale which is in question, could be more justly and reasonably attributed to the appellant than to either of the defendants. This will appear by a summarized statement of what is established in proof, or testified to by Starkweather himself.

First, Starkweather admits that the property formerly owned by the syndicate, cost him little or nothing; that he got out of it, in cash, \$31,000.

Complainant's witness, Gordon, testifies that in 1898, the property was worth \$3,000 or \$4,000 an acre (Rec., p. 67). Yet it was sold five years before, by complainant, to the syndicate, for \$75,000, or at the rate of \$7,500 per acre.

Second. The bill in equity filed by the appellant in May, 1895, and amended in May, 1896, against the trustees of said syndicate, for the purpose of rescinding the sale made to them, which suit is still pending, and known as Equity Cause No. 16,612, necessarily prevented the trustees from doing anything with the property, and destroyed the value of the syndicate certificates (Rec., pp. 256, 257, 260, 261).

Third. The conduct of appellant in connection with his attempted purchase of the property, as revealed by his own testimony, if not richerbours, lacks the element of common honesty and propriety of dealing. He concealed the fact that he was bidding on the property from every member of the syndicate. He did not bid upon the

property in person; he attempted to procure the money to complete his purchase from one of the members of the syndicate, upon worthless securities; he repudiates the action of his agent, Ricker, who purchased the property for him at the first sale, in bringing suit against Cole and Duvall, as trustees, to restrain the re-sale of the property; he has a new agent bid on the property at the second sale; when the property is knocked down to him, he offers a worthless cemetery bond in place of cash, as required by the terms of sale; he finally brings this suit, averring fraud and wrongdoing. He is not able to adduce a single item of evidence in support of his allegations, except the power of attorney which was filed as an exhibit with the bill filed by Robert G. Campbell, which he characterizes as the missing link.

Justice McComas, speaking for the Court of Appeals, in discussing the question of fraud in the purchase of the land, uses the following language:

"In our opinion there is no evidence in this record to prove fraud, actual or constructive. There is a failure to show collusion between the defendants, or any of them. We do not extend this opinion by a review of four or five trivial circumstances, most of which were innocent, the rest of which are unimportant. Several transactions relating to the 3-acre tract, and most of them occurring after the sale to the appellant of the 7-acre tract of land, we deem so unimportant that we need not discuss them here.

"The appellant's bill is plentiful in accusation, and his testimony in his own behalf abounds in suggestion of improper conduct, and the argument of counsel and their brief is plentifully supplied with expressions of understandings and the tacit consent of trustees, Croissant and Johnson, in behalf of Jenner and Spear, two of the purchasers; but the testimony falls far short."

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This view was concurred in by the learned justice who

heard and decided the case in the Supreme Court of the District of Columbia. Two highly respectable courts have decided that there was no fraud, actual or constructive, on the part of the appellees, or either of them, connected with the purchase of the real estate in controversy. This finding, this court ought not to disturb, unless some obvious error has intervened in the application of the law, or some important mistake has been made in the evidence, which the appellant has clearly pointed out and made manifest.

*Richardson vs. Van Aukam*, 5th App. D. C., 209.

*Tilghman vs. Procter*, 125 U. S., 136.

*Evans vs. State National Bank*, 141 U. S., 107.

This brings us to the second point in the discussion.

Second. Ought Jenner to be decreed to hold the title as trustee for all the members of the original syndicate, including the appellant?

Jenner admits that under the circumstances set forth in our statement of the case first hereinbefore mentioned, he, on behalf of himself and certain other members of the syndicate who were willing to join him, purchased the property at the last auction sale, to protect their interests and the money they had put into it, Jenner alone being the owner of four shares or certificates at that time, and later acquiring four more.

See Jenner's answer, par. 3, bottom of page 10 and top of page 11 of Record.

Is this illegal or unlawful? We submit it is not. The mere statement of the proposition would seem a sufficient refutation without citation of authority.

If this were so, every syndicate member or copartner in any enterprise, where property in which he were interested is sold under a prior existing lien, would be compelled to stand by and see all he had invested swept away and be powerless to prevent it.

This court has, in numerous cases, held that a trustee may purchase the trust property at a judicial sale, brought about by a third party, which he had no part in procuring, and over which he could not have had control.

In the case of *Twin-Lick Oil Co. vs. Marbury*, 91 U. S., 587, a case which arose in this jurisdiction, the defendant Marbury was a director and officer of the complainant corporation, which owned and operated an oil well in West Virginia. It became much embarrassed in the early part of 1867, and borrowed from Marbury \$2,000, for which it gave a note secured by a deed of trust, and conveyed all of its property, rights, and franchises to one Thomas to secure the payment of the note, with the usual power of sale in case of default of payment. The note matured, was not paid, and the property was sold under the deed of trust. An agent of Marbury bought it in for his benefit, and conveyed it to him in the same year. At the time of the purchase by him, Marbury was a stockholder and director in the company.

Four years later a bill in equity was filed to have a decree that Marbury held the property as trustee for the corporation and for an accounting. The bill charged that he had abused his trust relations to the company to take advantage of its difficulties, and buy in at a sacrifice its valuable property and franchises; that, concealing his knowledge that the lease of the ground on which the company operated included a well working profitably, and by promises to individual shareholders that he would purchase in the property for the joint benefit of the whole, he obtained an unjust advantage, and, in other ways, violated his duty as an officer charged with the fiduciary relation to the company.

With respect to these charges, the court said at page 588:

*"As to all this, which is denied in the answer, and to which much testimony is taken, it is*



*sufficient to say that we are satisfied that the defendant loaned the money to the corporation in good faith and honestly to assist it in its business in an hour of extreme embarrassment, and took just such security as any other man would have taken; that when his money became due, and there was no apparent probability of the company paying it at any time, the property was sold by the trustee, and bought in by the defendant at a fair and open sale."*

The court proceeds to say that the first question which rises in this state of the facts is whether the defendant's purchase was absolutely void. The court then discusses at some length the duty which an officer in a corporation owes to stockholders by reason of his position, and holds that wherever such a transaction between a stockholder and the corporation is an honest one and free from fraud, he has the same right to purchase the corporation's property at a sale, for the purpose of protecting his interest and the money he loaned, as any stranger would.

On page 591 of this case, the court again said:

*"The company was hopelessly involved beside the debt to defendant. The well was exhausted to all appearances. The machinery was of little use for any other purpose and would not pay transportation. Most of the stockholders who now promote this suit refused to pay assessments on their shares to aid the company. Nothing was left to the defendant but to buy it in, as no one would bid the amount of his debt."*

In the case at bar Jenner was not a director or officer in the syndicate. He was only one of a number of syndicate shareholders. The syndicate was hopelessly involved. There were deeds of trust against the property besides the one under which Cole and Duvall

trustees, foreclosed, including the trust securing the Hubbard loan. Cole and Drivall were independent trustees, in no way connected with the syndicate, and the sale was brought about by Gantner's direction to them, and not by Jenner. He was certainly entitled to be present at the sale and purchase it, if he saw fit, for the purpose of protecting and trying to save the money which he had put into the syndicate. If he could do this by himself, certainly he could do it by joining with several other members of the syndicate, each one of whom had equal rights with him to do the same thing.

In the case of *Allen ex. Gillette*, 127 U. S., 589, one James Morgan, a citizen of Kentucky, died in 1866, possessed of an estate of some 70,000 acres of land, and a homestead in Galveston, with some personal property. The land was not productive and scattered throughout the State. He devised his property to seven grandchildren, of whom Mrs. Allen was one. By the terms of the will, Gillette and two other persons were executors.

They were authorized, without probating the will or filing an inventory and appraisement of the property, to administer the estate without any accountability to any judge or court, and they entered upon the management of the estate.

Thereafter, Mrs. Allen and her husband gave their note for \$1,200, payable six months after date, with 12 per cent interest, to a certain bank of Galveston, to secure which note they executed a deed of trust on all of Mrs. Allen's interest in the tracts of land described in the deed belonging to the estate. Mrs. Allen and her husband being unable to pay the note when it matured, the deed of trust was foreclosed, her interest in said estate was sold thereunder, and Gillette became the purchaser of her interest at the foreclosed sale.

A bill was filed by Mrs. Allen to set aside the sale, in which she stated at length that she was poor and in

needy circumstances, because of the failure and refusal of Gillette to settle the estate, or to render it available to relieve her necessities, and she was induced by his advice to borrow the money from the bank and execute the note and deed of trust, which she would not have done but for his promise to make her interest in the estate available so as to pay off the note when it matured.

She further alleged that Gillette withheld information from her as to the condition and value of the estate, and by making no reports to the court obtained an undue advantage over her, which enabled him to bid in her interest for less than it was worth at the time of the sale.

Gillette answered the bill, in which he specifically denied any fraud or wrongdoing on his part. The case was heard on bill and answer and exhibits, and upon the trial the court found that no fraud was shown to have been committed, and denied the relief prayed for in the bill.

When the case came before the Supreme Court of the United States, the claim of actual fraud committed by Gillette was abandoned, but it was insisted that the purchase made by Gillette could not be legal on account of his fiduciary relationship towards Mrs. Allen.

The court considers and discusses the attitude which such fiduciary relationship imposes, and held there was no reason why Gillette should not purchase the property for his own personal benefit.

The court said at page 596:

"There is nothing in the transaction, from its inception to its final consummation, that imposed upon the defendant any duty incompatible with his right as a purchaser at the sale.

"The principle that a trustee may purchase the trust property at a judicial sale brought about by a third party, which he had taken no part in procuring, and over which he could not have had control, is upheld by numerous decisions of this court and of other courts of this country. *Prevost vs. Gratz*, 1 Peter C. C., 364, 378; *Twin Lick Oil*

*Co. vs. Marbury*, 91 U. S., 587; *Chorpening's Appeal*, 32 Penn. St., 315; *Fisk vs. Sarber*, 6 W. & S., 18."

The sale in the case at bar was made by independent trustees acting under the direction of the holder of the note, who had no interest in the syndicate whatever, and Jenner had no control whatever over said trustees or the sale.

In the case of *Pewabic Mining Company vs. Mason*, 145 U. S., 349, the Pewabic mine was owned by a corporation bearing that name, a majority of the stockholders in which were also interested in an adjoining mine called the Franklin, and a minority interested in another adjoining mine called the Quincy. The stockholders litigated for a considerable period over the Pewabic mine. Finally a decree was passed for the sale of the mine, at which a majority of the stockholders combined and purchased it against the minority stockholders, and afterwards conveyed the property to the Franklin Mining Company. The minority stockholders filed a bill to set aside the sale, alleging various instances of fraud and wrongdoing on the part of the majority stockholders, and claimed that the agreement of the majority stockholders to buy in the mine at the sale at a reduced price was void, because of their relationship towards the Pewabic Mining Company. The court declined to set aside the sale, and held it to be good, saying that the sale was made by the master appointed by the court, and that he was independent of either the majority or the minority of the stockholders, and not under the control of either, and that at such a public sale every party might bid. The gist of the opinion on the point involved here is aptly contained in the fourth syllabus of the opinion. It reads as follows:

"When a corporation owning real estate is wound up, by reason of the expiration of the

term for which it was incorporated, and its real estate is sold by decree of court under directions of a master, stockholders may purchase it, and there is no fraud on other stockholders if a part of the stockholders combine to purchase it for the benefit of an adjoining property owned by them."

The appellant sustains the same relations to the syndicate as does Jenner, the appellee who is charged, directly, or by implication, with violating a duty he owed to the appellant. Both were shareholders. The appellant owned seven shares, all of which were, by his own testimony, hypothecated. Jenner owns eight shares. Jenner bid openly, in person, at the sale; Starkweather, secretly and without the knowledge of any other member of the syndicate. Starkweather testifies that he intended to permit the other shareholders to participate in the purchase, had he succeeded in buying the property. This pious intent was not disclosed to any member of the syndicate, until it was revealed by his evidence on the stand. By his own evidence, he was not on friendly terms with any member of the syndicate. His right to bid at the sale is not questioned, but his motive in so doing, considering his financial condition, and the manner of his bidding, is open to grave animadversion. It was his duty, had he desired to participate in the purchase made by Jenner, to have at once signified such desire, and to have tendered his proportionate part of the purchase money. He never made such tender, nor took any steps to enforce his assumed rights, until he exhibited his bill in equity in this case, which was five years after the sale had taken place. The bill does not make any such tender, and is fatally defective on that ground.

*Britton vs. Handy*, 20 Ark., 400.

*Barr vs. Miller*, 65 Ill., 258.

*Lomax's Digest*, p. 262.

On this point, in the case of *Twin-Lick Oil Co. vs. Marbury*, *supra*, it was held that because of a delay of four years after the sale, plaintiff had delayed too long in bringing his suit.

In this connection Justice McComas said:

"The proof in the record satisfies us that the appellee and his associates were unwilling to stand by and see their very considerable investment in the "Crescent Heights" syndicate lands swept away by a sale under a lien existing prior to the purchase of the land by the syndicate, and therefore agreed to buy the property, in the hope that they would thus save the money they had invested. It also appears that Starkweather endeavored to do the same thing in the same way, and with a like intent and motive. The appellee, having a private agreement with his associates bid openly in his own name. The appellant secured another person to bid, as we have said."

27 App. D. C., pages 358-359.

And at the close of his opinion, he said:

"In the case before us, where the appellee bought this real estate in times of depression, and during the subsequent five years the land he bought had steadily increased in value, this appellant delayed five years before bringing this suit.

"If we had serious hesitation in affirming the decree of the court below, this long delay on the part of the appellant should resolve all remaining doubts and determine us to sustain that decree" (p. 361).

This is not the case of one tenant in common purchasing an outstanding interest in the estate held in common. The sale under the trust cut up the title of the syndicate by the roots, and extinguished all the

right, title and interest of the shareholders of the syndicate, in and to the property in controversy.

We have not been favored with a copy of appellant's brief in time to make a reply thereto.

We respectfully submit that there is nothing contained in the record to justify a reversal of the decree of the court below, and that it should accordingly be affirmed, with costs.

Respectfully submitted.

B. F. LEIGHTON,

*Attorney for Appellee Jenner.*

R. GOLDEN DONALDSON,

*Attorney for Johnson and Croissant, Trustees,  
and Cole and Durall, Trustees.*

STARKWEATHER *v.* JENNER.APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF  
COLUMBIA.

No. 114. Argued January 28, 1910.—Decided February 28, 1910.

In this case the charges of fraud and collusion on the part of the defendants are wholly unsupported.

The rule that equity may convert into a trustee a co-tenant who attempts to buy an outstanding hostile title does not apply where the common property is sold at *bona fide* public sale under legal process or power in a trust deed. At such a sale, and in the absence of fraud or deceit, any one of the co-tenants is as free to buy as any of the general public, and several of the co-tenants may combine without notice to the others to purchase for themselves.

A judicial sale for inadequate price resulting from combination of bidders is voidable, not void, and one who would complain must after discovery seasonably elect whether he will avoid it or not. A delay of four years where the property is of speculative character and has largely increased in value meanwhile is unreasonable.

27 App. D. C. 348, affirmed.

THE facts are stated in the opinion.

*Mr. Richard P. Evans* for appellant.

*Mr. B. F. Leighton*, with whom *Mr. R. Golden Donaldson* was on the brief, for appellees.

MR. JUSTICE LUTTON delivered the opinion of the court.

The appellant, George B. Starkweather, was the owner of a parcel of unimproved land known as the Crescent Heights, in Washington, D. C., composed of two contiguous lots, one of seven and the other of three acres. In January, 1892, pursuant to a plan arranged between himself and certain persons associated with him, and styled herein the syndicate,



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he conveyed this tract to defendants Croissant and Johnson, as trustees, for the benefit of the persons who should contribute to the purchase price, as tenants in common, in the share and proportion in which they respectively contributed, with power to control, manage, lease, sell and convey, in their discretion, as should be desirable or advantageous to the parties interested. Those contributing or proposing to contribute agreed among themselves, by a separate paper, that the price, including the discharge of incumbrances resting upon the property, should be \$75,000, divided into shares of \$2,500 each, and each person accordingly subscribed for such number of shares as they elected to take, agreeing that Croissant and Johnson should represent them as trustees in the purchase, with full power to manage, sell and convey, receiving a commission for their service. Among those so contributing originally, or by substitution, were the trustees Croissant and Johnson, the appellant Starkweather, who was to receive, and did take, eleven shares, fully paid up, as and for part of the purchase price, and the appellee Jenner, who ultimately came to own four of such shares. The full number of thirty shares contemplated were never subscribed, six remaining unsold in the hands of the trustees. This fact, from whatever cause, seems to have led to the inability of the syndicate to pay off the incumbrances which were to be assumed and paid off as part of the price. Among these incumbrances were several deeds in trust or mortgages securing obligations of the vendor appellant.

The certificates to subscribers were issued by Croissant and Johnson, and recited, among other things, that they held the property in trust, and that the holder was a contributor to the purchase price to the extent of \$2,500, and the owner of an undivided one-thirtieth interest, and that such interest "shall at all times be subject to assessment for its proportionate part of money necessary to pay expenses incurred in the execution of the trusts as provided in the deed to said trustee, . . . and in default of such payment the said

trustees . . . are hereby authorized to sell the interest of such person so in default," etc.

Out of the money paid in by the subscribers a part was used by the trustees in paying off incumbrances, keeping down interest and in other expenses, but something like eleven thousand dollars was paid over in money to or on account of the vendor Starkweather.

Among the trusts upon the property was a deed in trust upon the seven-acre parcel to the appellees, Duval and Cole, as trustees, to secure an obligation created by Starkweather for \$7,553.34 to a Mr. Gaither, executed January 29, 1889, and maturing in four years. In 1893 this debt matured. By agreement the enforcement of the trust was postponed upon payment of interest. But, finally, there was a default and a sale directed by Gaither. The property was, accordingly, advertised by the trustees and sold at public outcry in 1897 and bid in by one Ricker, acting for and as agent of the appellant. The time for complying with the sale by Ricker was extended upon the payment by appellant of \$300 for each of two extensions. Default in complying with the terms of sale was, however, again made, and the property readvertised. Appellant attempted to forbid such resale, and filed a bill for that purpose, which was not dismissed until February, 1898, when the property was again advertised and offered for sale by Duval and Cole, the trustees, and knocked down to one Silver, acting as an agent for Starkweather. The terms of this second sale were not complied with, and the property was at once recried and sold to the appellee Jenner for \$17,100, acting, as it turned out, for himself and certain others, who, like Jenner, were members of the original purchasing syndicate, or holders of certificates acquired later from those who were. Jenner complied with the terms of sale and paid the full purchase money and accepted a deed from the trustees. After paying off the Gaither debt the remainder of the price paid by Jenner was distributed to other lienors, under a bill in equity filed for that purpose, under which final

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decrees have long since been made and the trustees exonerated.

The object of the present bill is to set aside this deed by Duval and Cole to the appellee Jenner, and revest the title in Croissant and Johnson as trustees for the syndicate; or, in the alternative, declare Jenner a trustee holding the seven-acre parcel, after his reimbursement, for the benefit of the syndicate subscribers.

The charges of the bill abound in accusations of fraudulent collusion between Jenner and the other appellees to bring this seven-acre lot to sale under the Duval and Cole trust, and thereby the elimination of appellant as the largest holder of certificates in the syndicate. It is among other things said that Croissant and Johnson wilfully suffered a default. That they had certificates unsold and money in their hands and power to assess the members of the syndicate to raise means to pay off the incumbrance and thus save the property for the benefit of all concerned; but had wilfully and collusively let the property be brought to sale, and in fact, persuaded Gaither or his trustees to proceed under the trust. These charges of collusion or fraudulent conduct upon the part of either Gaither, the creditor, or his trustees, Duval and Cole, are utterly unsupported. Their course was from beginning to end, so far as this record shows, dictated by prudent business conduct, and great consideration for appellant in his natural desire to prevent an enforcement of the trust. So far as Croissant and Johnson are concerned, it is not shown that they had in any way colluded with either the creditor, his trustees, or with the purchaser at the Duval and Cole sale, or that they had the slightest interest in the acquisition of this seven-acre tract by Jenner or his associates. They are not shown to have misapplied the funds of the syndicate, or to have had any funds with which to meet and pay off either the principal or interest of the Gaither debt. That they did not assess the shareholders, as they might have done under the terms of the trust to raise money to

pay off this and other incumbrances, is true. Their excuse is that most of the members could not pay or be made to pay and that all were unwilling to pay. That a sale of their certificates would have been unavailing, as it would have been only to sell the property subject to heavy incumbrances, and a sale of a mere equity. But whether they were derelict or not, they are not shown to have acted in collusion with either Gaither, his trustees, or with Jenner and his purchasing associates.

But it is said that Jenner's relation as tenant in common to appellant and those associated with him as owner of the property sold to pay off this paramount lien, forbid his purchase. That there is such a community of interest between those who hold a common title as to forbid one such co-tenant from acquiring any benefit from the acquisition of an outstanding superior title, is undeniable. That a court of equity upon timely application will convert such a purchasing tenant into a trustee for the common benefit, is true. The doctrine is considered and applied in *Rothwell v. Deverees*, 2 Black, 613, and *Turner v. Sawyer*, 150 U. S. 578. For much the same reason one tenant may not hold adversely the common property against another, though he may do so, if he act openly, and, in that event, the statute will run in his favor. *Elder v. McCluskey*, 70 Fed. Rep. 529, 542.

But it is plain that the principle which turns a co-tenant into a trustee who buys for himself a hostile outstanding title, can have no proper application to a public sale of the common property, either under legal process or a power in a trust deed. In such a situation, the sale not being in any wise the result of collusion nor subject to the control of such a bidder, he is as free, all deceit and fraud out of the way, as any one of the general public.

Even a trustee has been held competent to purchase the trust property at a judicial sale, which he has no interest in, nor any part in bringing about, and which sale he in no way controls. *Twin Lick Oil Company v. Marbury*, 91 U. S. 587; *Allen v. Gillette*, 127 U. S. 589.

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But it is said that if there is no absolute prohibition upon one co-owner buying at an open sale of the common property to satisfy a mortgage or other incumbrance thereon, that at least the fiduciary character and common interest due to such a cotenancy require of one who buys the utmost fairness of conduct. Concede this. It is then said, that Jenner at the bidding held a power of attorney from three others of the syndicate members, by which he was to bid the property in for their mutual benefit at the lowest price possible, and at a price not exceeding \$24,000. That he held this power of attorney and had undertaken to buy at as low a price as possible was not known to appellant and that this "secret combination," as it is styled and designated, was a fraud upon him. It is plain from the facts of this case that the scheme for exploiting this Crescent Heights property, according to the agreement exhibited by the share certificates, had practically collapsed, and that for the want of means and harmony among the owners there was no practical way of clearing the property from incumbrances, which had turned out to be about \$39,000, a sum larger than seems to have been originally supposed. There was nothing left but for the members of the syndicate to put their hands into their own pockets and put in a large additional sum or let the incumbrances be enforced. This latter is just what happened. In such circumstances it was plainly the right of each one to take care of himself, and if he saw fit to buy at the trust sale on the chance of making something, he was free to do so, provided only he took no undue or unfair advantage of his co-owners, and observed the rules concerning fairness at such a sale which prevails in any circumstances. If two or more of those who had been concerned should choose to unite their fortune in a new purchase, there was no principle of law or morals to forbid. That they should agree to buy at the best price obtainable was their right, if they might buy at all, provided they resorted to no artifice to deter others from bidding. *Pearlberg Mining Co. v. Mason*, 115 U. S. 349.

Mr. Jenner's attitude at the sale was that of an open bidder acting in his own interest, and necessarily in opposition to that of the appellee and other cotenants. There were others present at the sale bidding against him, and chief among them was the appellant himself, who, although he says he intended to give the syndicate the benefit of his purchase, said nothing of it, and seemingly sought to secure himself as best he could in the apparent wreck of the joint enterprise. It was the misfortune of the appellant that he forced the bidding beyond the maximum price to which Jenner was authorized to go, and then was unable to comply with the terms of the sale. This resulted in an immediate reoffering of the property, as was to be expected. That in this second sale the property was knocked down for much less only shows that the former price had been inflated by the competition between these cotenants, each trying to save himself in the same way. That the price at which Jenner bought was probably several thousand dollars less than its then estimated market value, may be true. But it is also true that the property was of a speculative character, and at that time and for some time later was difficult of sale and much depressed. But this price was not so grossly inadequate as of itself to justify relief, even if the bill had been promptly filed. That sale was in February, 1898. This bill was filed in the spring of 1903. That appellant did not at the sale know that Jenner was buying for himself and certain other of the syndicate may be true, but he, confessedly, learned that fact when Jenner and his associates fell out and the fact came to light in a bill filed in December, 1898. At most, the sale was voidable, not void, and he who would complain must seasonably elect whether he will avoid it or not. *Twin Lick Oil Co. v. Marbury*, 91 U. S. 587.

Appellant did not act with that degree of promptness which equity demands. He has slumbered over the question of whether he should elect to let Jenner hold on to his purchase or require him to give the benefit of his bargain to his co-

tenants. A delay of not less than four years, during which there has been a large appreciation in the value of the property, is unreasonable. Two courts in succession have failed to find ground for relief, and we see no good reason for reversing the decree from which the appellant has appealed.

It is therefore

*Affirmed.*

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